

E. LEDRER

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1	Q.	You used to run that same route,	11:09:34
2		right?	11:09:37
3		MS. DOLLIN: Objection.	11:09:37
4	Q.	Across the 102nd Street	11:09:38
5		Transverse?	11:09:41
6	A.	Sometimes.	11:09:41
7	Q.	Before, before you left the 20th	11:09:41
8		Precinct, do you recall that you learned	11:09:54
9		the location of where she was found or did	11:09:57
10		you not learn that until you got to the	11:10:00
11		24th?	11:10:02
12	A.	I don't really remember when I	11:10:03
13		learned that.	11:10:06
14	Q.	All right. At some point, did	11:10:06
15		you make an attempt to develop a timeline	11:10:23
16		of all these events that were taking place	11:10:26
17		in the park?	11:10:29
18		MS. DOLLIN: At what period of	11:10:29
19		time are you asking?	11:10:31
20	Q.	While you were at the -- when	11:10:31
21		you got involved in the investigation, at	11:10:32
22		some point did you try to construct or ask	11:10:34
23		somebody to construct a timeline of the	11:10:37
24		events?	11:10:39
25		MS. DOLLIN: And again, you're	11:10:39

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P-APP001099

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1	asking prior to arraignment, right?	11:10:41
2	MR. MOORE: Prior to when?	11:10:43
3	MS. DOLLIN: Arraignment.	11:10:44
4	MR. MOORE: Yeah, I guess, sure.	11:10:46
5	A. Excuse me?	11:10:48
6	Q. Prior to the time, prior to the	11:10:48
7	time a decision was made to arrest whoever	11:10:52
8	you were going to arrest for the rape of	11:10:55
9	Patricia Meili, did you see a timeline or	11:10:57
10	were you involved in constructing a	11:10:59
11	timeline?	11:11:01
12	MS. DOLLIN: Objection to form.	11:11:01
13	A. When I was at the 20th Precinct	11:11:02
14	and the 24th Precinct, I don't remember	11:11:06
15	anybody specifically working on a	11:11:13
16	timeline.	11:11:20
17	Q. Well, you knew there were a	11:11:22
18	series of events --	11:11:28
19	MR. MOORE: Withdraw that.	11:11:30
20	Q. Were you present -- did you know	11:11:31
21	who Chief Rosenthal was?	11:11:33
22	A. I think I'd heard his name	11:11:35
23	before then.	11:11:37
24	Q. Were you present when he gave a	11:11:37
25	statement to the press concerning the	11:11:39

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P-APP001100

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1	case?	11:11:41
2	A. No.	11:11:42
3	Q. Okay.	11:11:42
4	MR. MOORE: Why don't you mark	11:11:50
5	this as 26.	11:11:51
6	(Document NYC041413 was hereby	11:11:51
7	marked as Lederer Exhibit 26 for	11:11:51
8	identification, as of this date.)	11:12:36
9	Q. I'm handing you what's been	11:12:36
10	marked as Lederer Deposition Exhibit	11:12:38
11	number 26. Have you ever seen this	11:12:40
12	document before?	11:12:45
13	A. Let me just take a minute to	11:12:45
14	look at it.	11:12:47
15	MS. DOLLIN: And while the	11:12:48
16	witness is reviewing it, it bears Bates	11:12:49
17	stamp number NYC041413.	11:12:52
18	A. Okay, I looked at the document.	11:14:03
19	Q. Have you ever seen it before?	11:14:06
20	MS. DOLLIN: Outside the	11:14:07
21	presence of counsel.	11:14:08
22	MR. MOORE: Yeah, I guess.	11:14:09
23	A. I don't know whether I've seen	11:14:13
24	this outside the presence of counsel.	11:14:14
25	It's possible that I saw this at some	11:14:16

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P-APP001101

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1 point, but I don't have a clear memory of 11:14:18
2 when that was. 11:14:22

3 MR. MOORE: Why don't you mark 11:14:23
4 this as 27. 11:14:26

5 A. I have -- 11:14:27

6 MS. DOLLIN: There's no question 11:14:28
7 pending. 11:14:30

8 (Document NYC059393 was hereby 11:15:06
9 marked as Lederer Exhibit 27 for 11:15:06
10 identification, as of this date.) 11:15:07

11 Q. I'm handing you what's been 11:15:07
12 marked as Lederer Deposition Exhibit 11:15:09
13 number 27, which is Bates stamp number NYC 11:15:11
14 59393. 11:15:18

15 Is this a document that's in 11:15:19
16 your handwriting? 11:15:20

17 A. Yes. 11:15:23

18 Q. And do you know when you created 11:15:25
19 this document? 11:15:29

20 A. I don't know when it was in 11:15:30
21 the -- and it was during the prosecution 11:15:43
22 of this case, but I don't remember when it 11:15:45
23 was. But I know that it was after 11:15:47
24 arraignment. 11:15:49

25 Q. After arraignment, why do you 11:15:49

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P-APP001102

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1 say that? 11:15:52

2 A. Because I know it was done after 11:15:53

3 arraignment. 11:15:57

4 Q. And you know that based upon 11:15:58

5 what though? 11:16:00

6 A. I know that Michael Vigne was 11:16:01

7 not known to us at the Central Park 20 and 11:16:09

8 24th Precinct. And I did not know the 11:16:14

9 name Rubin Ronan or Rohan until quite 11:16:23

10 sometime after arraignment. 11:16:28

11 I know that David Good was not, 11:16:30

12 I didn't know about him or speak to him 11:16:35

13 until after arraignment. 11:16:38

14 And I don't know when the name 11:16:40

15 or the word at the bottom with the 11:16:49

16 question mark came to be there. And -- 11:16:51

17 Q. The times indicated on this 11:16:56

18 document, are these the times when you 11:16:57

19 believed that these persons were assaulted 11:17:01

20 or attacked by the people in the park or 11:17:04

21 an approximation of when that occurred? 11:17:06

22 A. As I recall, I don't remember 11:17:09

23 exactly, but I don't believe this is drawn 11:17:18

24 from my opinion or my thought process. 11:17:26

25 I believe this is taken from the 11:17:29

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P-APP001103

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1 testimony of the witness or 911 calls or 11:17:33
2 police reports. 11:17:38

3 Q. Right, but it's a timeline of 11:17:38
4 events that took place in the park on 11:17:41
5 April 19, 1989, that evening, correct? 11:17:44

6 MS. DOLLIN: Objection. You can 11:17:47
7 answer. 11:17:49

8 A. It's a timeline of some of the 11:17:49
9 events that happened in the park. 11:17:51

10 Q. Right. And it's your 11:17:53
11 understanding that David Lewis, David 11:17:56
12 Good, Robert Garner and John Loughlin were 11:17:58
13 all attacked somewhere at or near the 11:18:02
14 reservoir, correct? 11:18:05

15 A. That was their testimony, yes. 11:18:08

16 Q. And you had no reason to doubt 11:18:10
17 that testimony, correct? 11:18:12

18 A. I don't. 11:18:13

19 Q. All right. And was, Antonio 11:18:14
20 Diaz was the person who you knew, who some 11:18:20
21 people described as the homeless person or 11:18:23
22 a bum, is that who that Antonio Diaz is? 11:18:25

23 A. That's the person the young men 11:18:29
24 referred to as the bum, yes. 11:18:32

25 Q. And do you know how that time 11:18:33

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P-APP001104

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1	was fixed, 9:15 to 9:20, do you know how	11:18:35
2	that came about?	11:18:41
3	MS. DOLLIN: Objection to form.	11:18:41
4	A. Other than what I already	11:18:42
5	answered, I don't.	11:18:45
6	Q. And Malone and Dean were the two	11:18:45
7	people on the tandem bike; is that	11:18:48
8	correct?	11:18:51
9	A. That's right.	11:18:51
10	Q. Who was Rubin Ronan?	11:18:52
11	A. Rubin Ronan was a taxicab	11:18:53
12	driver.	11:18:57
13	Q. Who alleged that people were	11:18:57
14	throwing stuff at his car?	11:18:59
15	A. That's what he said.	11:19:00
16	Q. And that would have been at what	11:19:01
17	location?	11:19:04
18	A. I don't remember as I sit here	11:19:04
19	today.	11:19:07
20	Q. Well, the cab, cabs would have	11:19:07
21	only been -- were not allowed to drive on	11:19:13
22	the 102nd Street Transverse, correct?	11:19:15
23	MS. DOLLIN: Objection.	11:19:18
24	Q. That was not a roadway for cars,	11:19:24
25	correct?	11:19:27

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1	A.	As far as I know, it wasn't a	11:19:27
2		roadway for general traffic.	11:19:31
3	Q.	So is it your understanding that	11:19:32
4		Ronan was on the east side of the park on	11:19:34
5		the roadway that cars could travel up and	11:19:37
6		down on?	11:19:40
7	A.	I believe that's where he was,	11:19:42
8		yes.	11:19:44
9	Q.	And do you know approximately	11:19:44
10		where his location was when he alleged	11:19:45
11		rocks were thrown at his car?	11:19:48
12	A.	I don't remember now.	11:19:50
13	Q.	Was it someplace near the ball	11:19:53
14		fields, does that refresh your	11:19:57
15		recollection?	11:19:59
16	A.	It doesn't refresh my	11:19:59
17		recollection.	11:20:00
18	Q.	At the time you wrote this	11:20:00
19		timeline, were you aware of the fact that	11:20:09
20		Patricia Meili had been attacked in the	11:20:13
21		park?	11:20:16
22		MS. DOLLIN: Objection.	11:20:16
23	A.	Yes.	11:20:18
24	Q.	And where in the course of this	11:20:20
25		timeline would you have placed that	11:20:23

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P-APP001106

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1	attack?	11:20:26
2	MS. DOLLIN: Objection.	11:20:27
3	A. I'm sorry, are you asking me	11:20:27
4	where I would place it today?	11:20:32
5	Q. Yeah.	11:20:34
6	A. In order to be able to answer	11:20:36
7	that question, I would have to review the	11:20:40
8	documents and exhibits from the trial.	11:20:43
9	Q. You can't say, you have no --	11:20:46
10	you can't say as you sit here today where	11:20:48
11	in the course of these events it was your	11:20:51
12	belief that Patricia Meili was raped and	11:20:53
13	assaulted?	11:20:56
14	A. To be able to answer that, I	11:20:57
15	would have to know where these times were	11:21:01
16	drawn from, and I would also have to look	11:21:04
17	at testimony from the hearing and trial.	11:21:06
18	Q. Well, you knew from your	11:21:09
19	involvement in the case that Patricia	11:21:12
20	Meili left her apartment at or around 8:55	11:21:15
21	that evening, correct?	11:21:19
22	A. Are you asking me whether I know	11:21:20
23	that today?	11:21:22
24	Q. Yeah.	11:21:23
25	A. I don't know that today.	11:21:23

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P-APP001107

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1	Q.	You have no memory of that?	11:21:25
2	A.	Not the particular time she	11:21:27
3		left, no.	11:21:28
4	Q.	Do you recall that -- who was	11:21:29
5		Michael Vigne?	11:21:31
6	A.	Michael Vigne was a young man	11:21:32
7		who was riding a bicycle in Central Park.	11:21:36
8	Q.	Who was the -- do you recall	11:21:38
9		that there was a person who Patricia Meili	11:21:39
10		talked to when she left her apartment that	11:21:42
11		evening?	11:21:45
12	A.	In person or on the telephone?	11:21:47
13	Q.	In person, yeah, in person.	11:21:49
14	A.	I recall that she ran into a	11:21:51
15		neighbor.	11:21:53
16	Q.	Right. Do you recall his name?	11:21:54
17	A.	I don't remember his name today,	11:21:55
18		I'm sorry.	11:22:06
19	Q.	Okay. And do you recall that he	11:22:06
20		indicated that he would have talked to her	11:22:11
21		sometime around 8:55 or nine o'clock that	11:22:15
22		evening, does that ring a bell for you?	11:22:18
23	A.	Without looking at the	11:22:21
24		transcript or the record, I don't remember	11:22:23
25		the time he testified to, no.	11:22:24

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P-APP001108

E. LEDRER

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1 Q. Do you recall ever coming up 11:22:26
2 with an estimate of how long it would have 11:22:31
3 taken Patricia Meili, based upon her 11:22:33
4 ability as a runner to get from her 11:22:36
5 apartment to the location on the 102nd 11:22:38
6 Street Transverse where she was attacked? 11:22:41
7 Do you recall coming up with an estimate 11:22:45
8 of how long that would have taken her? 11:22:47

9 MS. DOLLIN: Objection. You can 11:22:50
10 answer the question. 11:22:52

11 A. I recall trying to do an 11:22:54
12 approximation or a calculation of how long 11:22:59
13 it would take, yes. 11:23:00

14 Q. What was that, 20 minutes? 11:23:02

15 A. I'm sorry, but as I sit here 11:23:04
16 today 24 years later, I don't remember. 11:23:07

17 Q. Okay. Did you not review 11:23:09
18 your -- did you not indicate in the first 11:23:14
19 session of the deposition that you 11:23:17
20 reviewed the trial testimony in 11:23:18
21 preparation for, to help refresh your 11:23:22
22 recollection about the events you were 11:23:26
23 going to testify to in the deposition? 11:23:28

24 A. I did, yes. 11:23:30

25 Q. So you didn't do that 24 years 11:23:30

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P-APP001109

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1	ago, you did that just recently, correct?	11:23:33
2	A. I did that relatively recently,	11:23:36
3	but I didn't --	11:23:39
4	Q. Certainly not 24 years ago,	11:23:40
5	right?	11:23:42
6	A. No. But I didn't memorize the	11:23:42
7	times and the dates and the distances.	11:23:45
8	Q. And you don't recall that it was	11:23:46
9	estimated that to get from her apartment	11:23:52
10	running at the rate of speed she ran to	11:23:54
11	get to the 102nd Street Transverse, so	11:23:56
12	that would have taken approximately 20	11:23:59
13	minutes?	11:24:01
14	A. I don't have a memory of that	11:24:02
15	today. It's possible. I don't remember	11:24:05
16	what the calculation showed.	11:24:08
17	Q. Do you recall the police ever,	11:24:11
18	the detectives or the --	11:24:14
19	MR. MOORE: Okay, we have five	11:24:17
20	minutes. All right, we have to change	11:24:18
21	here.	11:24:19
22	MS. DOLLIN: We'll take a break.	11:24:19
23	THE VIDEOGRAPHER: This marks	11:24:21
24	the end of tape number 1 in the videotaped	11:24:22
25	deposition of Elizabeth Lederer. We're	11:24:24

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P-APP001110

E. LEDRER

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1 going off the record. The time is 11:24. 11:24:27

2 (A recess was taken.) 11:24:30

3 THE VIDEOGRAPHER: This marks 11:38:58

4 the beginning of tape number 2 in the 11:39:57

5 videotaped deposition of Elizabeth 11:40:00

6 Lederer. We're going on the record. The 11:40:02

7 time is 11:39. 11:40:04

8 Q. Ms. Lederer, do you recall the 11:40:11

9 distance between where the attacks on John 11:40:17

10 Loughlin took place near the reservoir and 11:40:22

11 where the attack on Patricia Meili took 11:40:26

12 place, what the distance is? 11:40:29

13 A. I know where the attacks took 11:40:30

14 place, but I don't know, I can't remember 11:40:34

15 if there was testimony at the trial about 11:40:39

16 the exact measurement or feet or yards. 11:40:43

17 But I know the location of each. 11:40:47

18 Q. Do you have an estimate as to, 11:40:50

19 for instance, of how many blocks that 11:40:52

20 would be? 11:40:54

21 MS. DOLLIN: Objection. 11:40:55

22 A. I don't. 11:40:56

23 Q. The reservoir was south of the 11:40:57

24 96th Street Transverse, correct? 11:41:04

25 A. I believe that although it's 11:41:05

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P-APP001111

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1	called the 96th Street Transverse, I think	11:41:08
2	it's at 97th Street, but it is south of	11:41:10
3	that.	11:41:13
4	Q. It's south of that though,	11:41:13
5	correct?	11:41:15
6	A. Correct.	11:41:15
7	Q. How far south, do you know?	11:41:15
8	A. I don't know.	11:41:17
9	Q. And did anybody ever estimate in	11:41:17
10	the course of the investigation that you	11:41:22
11	were involved in how long it would take	11:41:24
12	somebody to go from where the attack on	11:41:26
13	Loughlin took place to where the attack on	11:41:30
14	Meili took place?	11:41:33
15	MS. DOLLIN: Objection. Calls	11:41:33
16	for work product. Don't answer.	11:41:36
17	MR. MOORE: Calls for work	11:41:38
18	product?	11:41:40
19	Q. In the course of your	11:41:41
20	investigating the case, in your	11:41:42
21	involvement with the case, did anybody	11:41:45
22	ever estimate how long it would take from	11:41:47
23	one, from the location at the reservoir	11:41:52
24	from where Loughlin was attacked to where	11:41:55
25	Meili was attacked?	11:41:58

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P-APP001112

E. LEDRER

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1	MS. DOLLIN: Prior to	11:41:59
2	arraignment. You can answer that	11:42:00
3	question.	11:42:02
4	A. In, on April 20th and April	11:42:03
5	21st, I was not aware of any estimates	11:42:14
6	about distances while I was taking the	11:42:19
7	videotaped statements.	11:42:22
8	Q. Well, you were familiar with	11:42:23
9	that area of the park, right, you used to	11:42:25
10	run down the Transverse, correct, across	11:42:28
11	the Transverse?	11:42:31
12	A. I'm sorry, when you say that	11:42:31
13	area of the park, are you referring to the	11:42:33
14	Transverse?	11:42:35
15	Q. The 102nd Street Transverse,	11:42:36
16	right?	11:42:38
17	A. From time to time, I ran that.	11:42:38
18	Q. Did you from time to time run in	11:42:39
19	the reservoir, run the reservoir?	11:42:42
20	A. Yes.	11:42:42
21	Q. Okay. As you sit here today,	11:42:42
22	you can't tell me in a general, generally	11:42:47
23	what the distance is between where the	11:42:51
24	reservoir is and where the 102nd Street	11:42:54
25	Transverse is?	11:42:56

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P-APP001113

E. LEDRER

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1 A. As I sit here today, I can't 11:42:58
2 answer that in a meaningful way because I 11:43:02
3 never ran from the point that we believe 11:43:05
4 Patricia Meili was attacked to the point 11:43:09
5 where we believe John Loughlin was 11:43:11
6 attacked. 11:43:14

7 Q. And is it fair to say that 11:43:15
8 unless you were on the roads, either on 11:43:17
9 the west side or the east side of the 11:43:19
10 park, that to get from the reservoir to 11:43:21
11 the 102nd Street Transverse, you would 11:43:25
12 have to go down an embankment and go 11:43:28
13 across the 96th or 97th Street Transverse 11:43:32
14 and up the embankment, other than if you 11:43:34
15 were on the roads? 11:43:37

16 MS. DOLLIN: Objection to form. 11:43:39
17 In 1989? 11:43:39

18 MR. MOORE: Yeah. 11:43:41

19 A. That was my understanding, yes. 11:43:41

20 Q. And in the course of your -- 11:43:43
21 well, let me ask you this. Before a 11:43:53
22 decision was made to charge any of these 11:43:55
23 kids with rape, did anybody raise a 11:43:57
24 question in the course of the 11:44:00
25 investigation about how long it would take 11:44:01

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P-APP001114

E. LEDRER

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1 to get from 102nd Street to the reservoir, 11:44:05
2 102nd Street Transverse to the reservoir? 11:44:09
3 MS. DOLLIN: You can answer. 11:44:14
4 A. Can you repeat the question? 11:44:15
5 (The record was read.) 11:44:44
6 A. Prearraignment, while I was 11:44:44
7 taking statements at the precincts, I was 11:44:51
8 not aware of whether anybody in the police 11:44:53
9 department was making any calculations, 11:44:57
10 not to my knowledge. 11:44:59
11 Q. The question was, did anybody 11:44:59
12 raise that question. 11:45:02
13 MS. DOLLIN: Again -- 11:45:03
14 Q. Was it even brought up as 11:45:06
15 something to look into or discuss? 11:45:07
16 MS. DOLLIN: Prearraignment. 11:45:09
17 A. If the police brought it up and 11:45:11
18 discussed it among themselves, I don't 11:45:15
19 know. 11:45:17
20 Q. Okay. So you don't recall? 11:45:17
21 MS. DOLLIN: Objection to form. 11:45:19
22 Q. I'm asking you whether you 11:45:20
23 recall that ever being brought up, it's 11:45:22
24 really a simple yes or no question -- yes 11:45:24
25 or no answer. 11:45:27

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P-APP001115

E. LEDRER

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1	MS. DOLLIN: Objection.	11:45:28
2	Q. Either you recall it being	11:45:28
3	brought up or you don't.	11:45:30
4	A. I think my answer was I don't	11:45:32
5	know if it was brought up by the police.	11:45:34
6	It was not brought up to me.	11:45:37
7	Q. Did anybody at the point before	11:45:39
8	you decided to charge anybody with the	11:45:41
9	rape, do you recall anybody raising any	11:45:43
10	questions, any detectives, any officers,	11:45:47
11	you, Linda Fairstein, anybody, Tim	11:45:50
12	Clements, anybody raising a question about	11:45:53
13	how long it would take somebody who had	11:45:59
14	assaulted somebody by the reservoir to get	11:46:03
15	to the location where Patricia Maili was	11:46:06
16	assaulted, anybody at any point before the	11:46:08
17	decision to arrest anybody for the rape,	11:46:11
18	did anybody, do you recall anybody raising	11:46:15
19	that question?	11:46:17
20	MS. DOLLIN: Objection to form.	11:46:18
21	A. Can you repeat the beginning of	11:46:18
22	the question, just the first phrase.	11:46:20
23	MR. MOORE: Let me rephrase it.	11:46:26
24	Q. At any point up until a decision	11:46:27
25	was made to charge any of these young boys	11:46:35

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P-APP001116

E. LEDRER

Page 690

1 for rape, did anybody raise a question, 11:46:38
2 whether a detective, assistant DA, Linda 11:46:40
3 Fairstein, Tim Clements, anybody, did 11:46:46
4 anybody raise a question about how long it 11:46:49
5 would take somebody to go from the 11:46:50
6 location where Loughlin was assaulted to 11:46:52
7 the location where Meili was assaulted, 11:46:55
8 did anybody raise that question? 11:46:58

9 A. I don't know if the police or 11:47:01
10 the law enforcement personnel talked about 11:47:06
11 it. It was not discussed with me, and ADA 11:47:08
12 Fairstein, ADA Clements and I did not 11:47:13
13 discuss that question. 11:47:16

14 Q. At what point in time was the 11:47:17
15 decision made to charge people for the 11:47:24
16 sexual assault on Patricia Meili? 11:47:28

17 A. Are you asking charged in regard 11:47:31
18 to being arrested? 11:47:39

19 Q. Formally charged. You were 11:47:40
20 going to bring a rape charge against them, 11:47:43
21 at what point was that? 11:47:45

22 A. I just want it to be clear 11:47:47
23 because I'm distinguishing between at the 11:47:50
24 Grand Jury stage or at the arrest. 11:47:52

25 Q. Before, the decision to arrest 11:47:54

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NYCLD_036723

P-APP001117

1 R. NUGENT

2 interview?

3 A. At the time of this conversation, that's
4 correct.

5 Q. Did you tell Mr. Casolaro that you
6 thought your main job was to create a timeline of
7 that day?

8 MS. COHEN: Objection to form.

9 A. No.

10 Q. No, you did not tell him that?

11 A. No.

12 Q. Did you tell him that you had met the
13 victim's parents at the hospital?

14 A. Yes.

15 Q. Did you tell him that they went with
16 you to the jogger's apartment?

17 A. No.

18 Q. You did not tell him that?

19 A. No.

20 Q. Did you tell him that you found a taxi
21 receipt indicating what time the jogger arrived
22 home?

23 A. Yes, I did.

24 Q. Did you tell him that you didn't find a
25 Walkman in her apartment?

1 R. NUGENT

2 A. I don't believe I told him that, no.

3 Q. Did you tell him that you used the
4 receipt as a starting point to create the timeline?

5 MS. COHEN: Objection to form.

6 A. I used the receipt to show what time
7 she possibly had left her apartment to go running.

8 Q. But I'm asking you --

9 A. Her timeline.

10 Q. Yes. Did you tell Casolaro you created
11 a timeline from the taxicab receipt?

12 MS. COHEN: Objection to form.

13 BY MS. FISHER-BYRIALSEN:

14 Q. Patricia Miele's timeline?

15 A. It wasn't solely based on the taxi
16 receipt.

17 Q. But I'm asking if you told him that?

18 A. Yes, I did.

19 Q. Did you tell him other detectives felt
20 the timeline should have had the rape last?

21 A. No.

22 Q. You didn't tell him that?

23 A. No.

24 Q. Did you tell him that you interviewed
25 the jogger's friends and neighbors to firm up the

R. NUGENT

1
2 timeline?

3 A. Yes, I did.

4 Q. Did you tell him you felt she was
5 attacked somewhere around 9:45?

6 A. I don't believe I give him a time.

7 Q. Did you tell him that you knew the park
8 well, because you grew up around 108th Street?

9 A. No.

10 Q. Did you grow up around 108th Street?

11 MS. COHEN: Objection.

12 A. I grew up in the area.

13 Q. Did you tell him that you feel the area
14 where the attack happened is very dark at night?

15 A. Yes, I did.

16 Q. Did you tell him that you were present
17 during the videotaped statement of Mr. Wise?

18 A. I did not tell him that, no.

19 Q. You did not tell him that?

20 A. No.

21 Q. Why do you think Mr. Casolaro would
22 make up all these things?

23 MS. COHEN: Objection.

24 A. I can't tell you what his line of
25 thinking is.

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Conn.
Dept. of
Health
Services
John
Lederer

① Michael Vigne

9:05 - 9:10

② Antonio Diaz

9:15 - 9:20

③ Malone + Dean

9:15 - 9:20

④ Rubin Eonan

9:25 - 9:30

⑤ David Lewis

@ 9:25 - 9:30

⑥ David Good

@ 9:50

?

⑦ Robert Ganner

9:30 - 9:35

⑧ John Longtin

@ 9:25

Source
Person #

Det. [redacted]



Lederer #27

NYC059393

NYCLD_037042

P-APP001121

1 Arthur Clements

2 Q. Do you recall what?

3 MR. MYERBERG: Don't answer that, I
4 direct you not to answer that.

5 MS. FISHER-BYRIALSEN: And he can't
6 answer the subject matter either, is your
7 opinion?

8 MR. MYERBERG: Right.

9 MS. FISHER-BYRIALSEN: We'll just
10 mark them all for a ruling. We're not
11 going to spend time discussing it now. Is
12 that okay with you?

13 MR. MYERBERG: Yes.

14 MS. NELSON: I'm sorry, Jane, I
15 want to make sure I understand.

16 MS. FISHER-BYRIALSEN: I don't want
17 to have a debate about it now.

18 MS. NELSON: I don't either. I'm
19 just trying to understand what it is we're
20 marking for a ruling. Is the question
21 regarding the subject matter legal
22 research?

23 MS. FISHER-BYRIALSEN: Yes.

24 MS. NELSON: Thank you.

25 Q. Post arraignment, did you have any

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1 Arthur Clements

2 meetings about this case with anyone at the
3 District Attorney's office other than ADA
4 Lederer?

5 MR. MYERBERG: Objection.

6 Q. She could have been there, but with
7 more people, more people at a meeting or at a
8 discussion than just you and her.

9 A. Yes.

10 Q. Do you recall who was at those
11 meetings?

12 MR. MYERBERG: Objection.

13 A. Yes.

14 Q. Who?

15 A. At one meeting I recall there were
16 other members of Trial Bureau 40.

17 Q. What people and by name.

18 A. John Hogan, I believe Steve Cronin
19 was there, other more senior Assistant District
20 Attorneys in Trial Bureau 40.

21 Q. Do you recall their names?

22 A. I don't recall specifically all the
23 people who were there. I only recall John Hogan
24 and Steve Cronin being there. As I think
25 further, I believe Dan McNulty was there as

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NYCLD_035309

P-APP001123

1 Arthur Clements

2 well, but I can't remember what other Assistant
3 District Attorneys from Trial Bureau 40 were
4 there.

5 Q. Was ADA Fairstein there?

6 A. No.

7 Q. Did you have any meetings after the
8 arraignment in regards to this case that ADA
9 Fairstein attended?

10 A. I don't know what you mean by
11 meeting, but I do recall there were occasions
12 where Linda Fairstein, Elizabeth Lederer and I
13 were in Elizabeth's office in connection with
14 preparing Elizabeth Lederer to testify.

15 Q. Preparing Elizabeth Lederer to
16 testify?

17 A. Excuse me. I misspoke, Linda
18 Fairstein.

19 Q. Do you recall, and I'll broaden it,
20 instead of meetings, I'll call it discussions.
21 Do you recall having any discussions where Linda
22 Fairstein was present, other than what you just
23 testified to in regards to this case?

24 A. Well, as you know, there were
25 multiple proceedings. There was a pretrial

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NYCLD_035310

P-APP001124

1 Arthur Clements

2 hearing and a first trial and a second trial.

3 So the witness preparation that I just described
4 for Linda Fairstein occurred before each of
5 those three events.

6 And other than that, I do not have
7 a specific recollection of Linda Fairstein or
8 being present for meetings with Linda present.

9 Q. So you said on three separate
10 occasions you had, what I'm going to dub as
11 witness prep meetings or discussions, with Linda
12 Fairstein?

13 MR. MYERBERG: Objection.

14 Q. At least three?

15 A. I mean there were at least three.
16 We may have had more than one session before
17 each of the different proceedings I just
18 described, but it was those witness prep
19 meetings, as you just termed it, that I recall.

20 Q. How long were they, approximately?

21 A. I don't recall how long they were.
22 But I don't, I don't believe that I was present
23 for the entirety of the meeting -- meetings,
24 because in all three of the proceedings I just
25 described, Elizabeth Lederer was the person who

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1 Arthur Clements

2 did the direct examination on Linda Fairstein,
3 not me.

4 Q. You testified that you had no
5 specific recollection of any other discussions
6 with Linda Fairstein. Do you have any general
7 recollection of having discussions with her that
8 you just don't know the subject matter or the
9 date and time of?

10 MR. MYERBERG: Objection.

11 A. I don't have any specific or
12 general recollections of meetings with Linda
13 Fairstein outside of the witness preparation
14 meetings that we've been discussing for the last
15 few minutes.

16 Q. Just so we are on the same page, by
17 meetings, that could include just discussions in
18 your office or in her office. It doesn't have
19 to be an official meeting. Does that change
20 your answer?

21 A. I'm trying to search my memory
22 here. I do not have a recollection of any other
23 meetings. I don't remember any other meetings
24 other than what I've testified to. There may
25 have been, but I don't recall them.

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1 Arthur Clements

2 Q. After arraignment, what was Linda
3 Fairstein's role in the case?

4 MR. MYERBERG: Objection.

5 A. Based upon my personal knowledge,
6 her role was as a witness.

7 Q. As a witness only?

8 MR. MYERBERG: Objection.

9 A. That was my understanding of her
10 role.

11 Q. Was she, as far as you know,
12 involved in the preparation of any other
13 witnesses to testify?

14 MR. MYERBERG: Objection.

15 A. I don't know if she was involved in
16 the preparation of other witnesses or not, but
17 to the best of my recollection, she was not. I
18 don't know.

19 Q. Did she attend the trial, other
20 than when she was testifying?

21 MR. MYERBERG: Objection.

22 Q. I'll break it up, did she attend
23 the first trial, other than when she was
24 testifying?

25 MR. MYERBERG: Objection.

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1 Arthur Clements

2 A. I know, because the law required a
3 separation of witnesses, that she was not
4 present during the proceedings unless, unless
5 she was allowed to be present for the summation.
6 I can't recall if she was in the audience for
7 the summation for either of the two trials.

8 Q. Do you recall if she was present in
9 the Grand Jury during the Grand Jury
10 presentations of the case against the five
11 plaintiffs in this case?

12 MR. MYERBERG: Objection.

13 A. Well, she was not present, to the
14 best of my recollection, in the Grand Jury in
15 her capacity as an Assistant District Attorney.

16 I do not recall if she testified as
17 a witness in the Grand Jury, in which case she
18 would have been present in the Grand Jury.

19 Q. I asked you before about the media
20 coverage in the case, and I think you said there
21 was. There was media coverage, as far as you
22 know, when you got involved in the case,
23 correct?

24 A. Yes, I believe I testified that I
25 understood that there was some media coverage of

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3020

NEW YORK COUNTY
PART 59

INDICTMENT NO:
4762-89

Continued Hearing

Volume 5

111 Centre Street
New York, N.Y. 10013
November 13th, 1989

BEFORE: HON. THOMAS B. GALLIGAN,
JUSTICE OF THE SUPREME COURT

(Appearances: Same as previously noted.)

ofo

COURT CLERK: Hearing is continued. People of the State of New York verses Kharey Wise, Yusef Salaam, Antron McCray, Kevin Richardson, Steve Lopez, Michael Brisco and Raymond Santana, Indictment 4762 of '89.

MR. JOSEPH: Your Honor, if I may, just before we start. There had been discussions the last time we appeared as to whether I would be here on time and whether Mr. Diller would stand in. Obviously, I am here and I just want the record to so reflect.

MS. LEDERER: Before we begin this morning, I

Joseph T. Tierney, CSR, RPR

Proceedings

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1
2 just want to state for the record, I received a
3 phone call about 9:30 this morning from Mr.
4 Maddox's office asking for certain Rosarion
5 material, which was made available to him prior to
6 coming to court. I understand he still needs the
7 materials for Detective Cornetta and copies will
8 be made available to him before Detective Cornetta
9 testifies.

10 The second matter is I would ask the family
11 of Michael Brisco, if there be any in court, who
12 would be witnesses at this proceeding to please be
13 excused during the testimony of the next witness.

14 THE COURT: Nobody here? All right. Who is
15 the next witness?

16 MS. LEDERER: Detective Meehan.
17
18
19
20
21
22
23
24
25

Joseph T. Tierney, CSR, RPR

People - Fairstein - Direct - Lederer

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(A spectator leaves the courtroom.)

THE COURT: Mr. Moore, anybody here from your client? Mr. Moore, you have anybody here?

MR. MOORE: No, your Honor.

THE COURT: Okay.

MS. LEDERER: I call Linda fair Stein.

L I N D A F A I R S T E I N , called as a witness by and
on behalf of the People at the hearing, having been
first duly sworn, testified as follows:

COURT OFFICER: Have a seat. Give us your name and spell your last name, please.

THE WITNESS: My name is Linda Fairstein,
F A I R S T E I N.

DIRECT EXAMINATION

BY MR. LEDERER:

Q. Where are you employed?

A. I'm employed as an Assistant District Attorney in the office of the New York County District Attorney.

Q. And what is your position in the office?

A. I have two positions. I am in charge of the Sex Crimes Prosecution Unit of the office and I am deputy chief of the Trial Division.

Q. How long have you been with the New York County District Attorney's Office?

Joseph T. Tierney, CSR, RPR

1 People - Fairstein - Direct - Lederer 3047

2 A. Last week I celebrated my 17th year in the office.

3 Q. Directing your attention to shortly before 7:00
4 a.m. on April 21st, 1989, where were you?

5 A. The 21st, I was at the 24th Police Precinct
6 Stationhouse on West 100th Street in this county.

7 Q. At approximately that time, on that date, was
8 there a decision made about going to the 102 Street
9 Crossdrive in Central Park?

10 A. Yes, there was.

11 Q. Do you recall who was present in the course of
12 making a decision with respect to that matter?

13 A. I discussed that, going specifically at that time,
14 with Detectives Michael Sheehan, and Augie Jonza of the
15 Homicide Task Force.

16 Q. Was a decision made to go to the 102 Street
17 Crossdrive in Central Park?

18 MR. BURNS: I object to the form of the
19 question.

20 THE COURT: It is leading, but I'll allow it.
21 Maybe it will expedite it.

22 Go ahead.

23 MR. BURNS: Are they going to allow cross-
24 examination on this issue?

25 THE COURT: What issue? If it pertains to

Joseph T. Tierney, CSR, RPR

1 People - Fairstein - Direct - Lederer

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2 your particular client, we will.

3 Go ahead.

4 Q. Was a decision reached on that matter?

5 A. Yes, it was.

6 Q. And what was the decision?

7 A. The decision was made to go to that location
8 within the park that morning and to see if any of the
9 defendants would be willing to go with us.

10 MR. MOORE: I can't hear very well, your
11 Honor.

12 MR. MADDOX: The witness be instructed not to
13 tail off her voice at the end of her statements?

14 MR. MOORE: She also be instructed to speak
15 into the microphone so we can hear?

16 THE COURT: I don't know if I have to repeat
17 all those things, but we have some difficulty
18 hearing in this courtroom from time to time. The
19 microphone helps from time to time, but if you
20 just speak into it, maybe it will obviate some of
21 the problems.

22 THE WITNESS: Yes, your Honor.

23 Q. Who was it decided should go or would go to the
24 102 Street Crossdrive in Central Park?

25 A. I was going to go with those two detectives, and

Joseph T. Tierney, CSR, RPR

1 People - Fairstein - Direct - Lederer 3049
2 our plan at that particular point in time was to ask both
3 Kevin Richardson and Kharey Wise if they would go with us.

4 Q. As a result of that decision, did you have a
5 conversation with anyone from the Richardson family?

6 A. Yes.

7 Q. And who did you speak to?

8 A. I spoke with a man whom Detective Sheehan told me
9 was the father of Kevin Richardson.

10 Q. Where did you have the conversation with Kevin
11 Richardson's father?

12 A. On the 2nd floor office of the 24th Police
13 Precinct.

14 Q. Was that the Precinct Detective Squad office?

15 A. It is the large room that is the detectives' room,
16 yes.

17 Q. At the time that you had this conversation with
18 the father of Kevin Richardson, who else was present?

19 A. I believe when I started it, Detective Sheehan
20 made the introduction to me. There were a lot of people, a
21 lot of police personnel in the room and a lot of suspects
22 and family members, so I believe I started the conversation
23 directly with Sheehan and Kevin's father, but I continued
24 the conversation, which didn't last more than two minutes,
25 by myself.

Joseph T. Tierney, CSR, RPR

People - Fairstein - Direct - Lederer

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MR. MOORE: Objection, your Honor, not responsive to the question.

THE COURT: I'll allow it.

Q. Where was Kevin Richardson, if you recall, during the conversation you had with his father?

A. I believe my recollection was Sheehan went to talk to Kevin Richardson, they were within sight of me but..

Q. What, if anything, did you say to Mr. Richardson and what, if anything, did he say to you?

A. This was after I had been informed that Richardson had completed a videotaped statement, and I told his father -- his father had been present for the statement and knew the statement had been made. I said we wanted to go to the park. The sun had just come up, it was daylight, and I was anxious to go before crowds, whether it be public or press, arrived at that location, and I said that we would like to ask Kevin's consent to come with us to the park, that Mr. Richardson was entitled -- Senior, was entitled to come with us if he wanted. The purpose my telling him was that we would not be asking any more questions, that we were not going to the scene to do an interrogation, we were going to try to put statements that had been made together with the location of the crime scene.

Q. What, if anything, did Mr. Richardson say in

Joseph T. Tierney, CSR, RPR

People - Fairstein - Direct - Lederer

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1 response to what you told him?

2 A. He said that it would be okay with him if we went
3 and if we took Kevin.

4 Q. And did he indicate to you whether he wanted to
5 come along or not?

6 A. He said he did not. There were other family
7 members there, there were women from the family who I did
8 not speak with at that time, he said he would wait there,
9 would we bring Kevin back to the stationhouse, I said yes.

10 Q. After you finished speaking with the father, did
11 you see whether or not Mr. Richardson had a conversation
12 with Kevin Richardson?

13 A. I know that he then returned to where Kevin was
14 sitting. I couldn't hear them talk, but they were right
15 next to each other.

16 Q. After you had the conversation that you just
17 testified to with Mr. Richardson, did there come a time
18 where you had a conversation with Kharey Wise?

19 A. Yes.

20 Q. And where did you have that conversation?

21 A. Kharey Wise was in that same large room, the
22 precinct squad room. He was seated by himself, and I spoke
23 to him. He was alone.

24 Q. Would you please tell us, what, if anything, you
25

Joseph T. Tierney, CSR, RPR

1 People - Fairstein - Direct - Lederer 3052

2 said to him and what, if anything, he said to you?

3 A. I introduced myself to him, I told him that I was
4 an assistant district attorney. And I told him -- I
5 explained to him that I was interested in going with the
6 detectives and with him to -- back to the park to look at
7 the area where the crime occurred. And I then told him I
8 was going to read him his so called Miranda warnings or his
9 rights and ask him then if he would go with us, and I
10 explained our purposes purpose in going back there.

11 Q. You said you then read him his Miranda rights, did
12 you read that from a card?

13 A. Yes.

14 Q. Do you have that card with you today?

15 A. Yes.

16 Q. May I please see it?

17 (Card handed to the prosecutor by the witness
18 through the court officer.)

19 MS. LEDERER: I'd ask please to have this
20 marked as People's 34 for identification.

21 (So marked.)

22 Q. Showing you People's 34 for identification, is
23 that the card from which you read Kharey Wise the Miranda
24 rights on the morning of April 21st, 1989?

25 A. Yes, it is.

Joseph T. Tierney, CSR, RPR

1 People - Fairstein - Direct - Lederer 3053

2 Q. Is that in substantially the same condition as it
3 was on that morning?

4 A. Yes, it is a laminated card, in the same
5 condition.

6 Q. Would you please --

7 MS. LEDERER: Your Honor, at this time the
8 People would offer People's 34 in evidence.

9 (Exhibit shown to defense counsel by the
10 court officer.)

11 THE COURT: Any objection?

12 MR. MOORE: No, your Honor.

13 THE COURT: All right, mark it.

14 (So marked.)

15 Q. Would you please read each right that you read to
16 Kharey Wise and indicate what answer, if any, he gave to
17 each right as you read it to him?

18 A. The card, the numbers are covered now, but it
19 lists five rights. It differs from the form in police
20 memobooks in which each question is -- excuse me, in which
21 each right is followed by a question. It is my practice in
22 using this card, which I used for a number of years, to read
23 the warning and follow it with a question not written on the
24 card.

25 THE COURT: I just want to know what you did

Joseph T. Tierney, CSR, RPR

People - Fairstein - Direct - Lederer

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in this case.

THE WITNESS: In this case that's what I did.

A. It reads on the cards:

Number 1: You have the right to remain silent. I then said do you understand that. Mr. Wise said yes.

I said anything you say can be and will be used against you in a court of law, as it is written on the card. I then said do you understand that, he said yes or yeah.

Number 3: You have the right to talk to a lawyer and have him present with you while you are being questioned; do you understand that. Yeah was his response.

4: If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning if you wish; do you understand that. Yes.

5: The card says you can decide -- I read you can so decide at any times to exercise these rights and not answer any questions or make any statements, do you understand that. He said yes.

Then I turned the card over, where it says, question 1: Do you understand each of these rights I have explained to you. Wise answered yes.

The second question says: Having these rights in mind, do you wish to talk to us now. I did not say that exactly that way, it's not my language. I believe I paraphrased it

Joseph T. Tierney, CSR, RPR

1 People - Fairstein - Direct - Lederer 3055
2 and said having heard everything I just said to you, are you
3 willing to answer my questions now. Mr. Wise said yes.

4 Q. After you read him those rights and received those
5 answers, did you have further conversation with Kharey Wise?

6 A. Just to explain to him in a little more detail
7 what our purpose was in going to the park. He had not yet
8 been questioned by Miss Lederer on videotape and I explained
9 to him we were going to go back to the park, he would only
10 be asked a few questions about where he claimed he had been
11 when the jogger was attacked and that we would return to the
12 stationhouse and Miss Lederer, who was then doing other
13 videotapes, would question him on our return.

14 Q. When you asked him about going to the park, what,
15 if anything, did he say to you?

16 A. He said yeah, he would go with me.

17 Q. And did there come a time then --

18 MS. LEDERER: Withdrawn.

19 Q. Did Kharey Wise ever ask for an attorney or to
20 speak with his mother or another family member?

21 A. No, he did not.

22 Q. Did he ever ask you if he can make a phone call?

23 A. No, he did not.

24 Q. Did you he ever cry during the time you spoke to
25 him or you saw him in Central Park?

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2 A. He never cried. He was quite relaxed, he didn't
3 seem to have a lot of interest in much that was going on.

4 MR. MOORE: Can we strike that as not being
5 responsive?

6 THE COURT: Yes. The only question is did he
7 cry?

8 THE WITNESS: No.

9 MR. MOORE: Can you strike the rest?

10 THE COURT: Yes.

11 Q. Approximately how long did you speak with Kharey
12 Wise?

13 A. At that time, after reading --

14 Q. Yes.

15 A. -- reading his rights? Less than two more
16 minutes.

17 Q. There come a time you went to the Crossdrive at
18 102nd Street in Central Park?

19 A. Yes.

20 Q. How did you travel to that location?

21 A. We went in an unmarked police car. There were
22 five of us: Detective Sheehan was driving, I was sitting
23 next to him in the front seat, Detective Jonza was in the
24 middle of the back seat, richardson and Wise were on either
25 side of him and were not handcuffed.

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1
2 Q. Was there any conversation in the car, either by
3 yourself or in your presence, with either Kevin Richardson
4 or Kharey Wise regarding anything about the investigation
5 that was under way?

6 A. No, we, the detectives and I, did not want any
7 conversation about the case or investigation, particularly
8 with each defendant in the presence of each other. There
9 was general small talk among the five of us that morning
10 driving to the park.

11 Q. How long did the trip to the 102 Crossdrive take
12 from the 24th Precinct?

13 A. Between ten to fifteen minutes.

14 Q. What were the lighting conditions like when you
15 arrived at the 102 Street Crossdrive?

16 A. It was light, it was daylight.

17 Q. Would you please describe what happened when you
18 arrived at the Crossdrive that morning?

19 A. Detective Sheehan was driving across 102nd Street,
20 he slowed down --

21 MR. MOORE: I'm sorry, across what street?

22 THE WITNESS: Across 102nd Street on the
23 Crossdrive or Transverse.

24 A. He was driving slowly. He had been to that area
25 he told me earlier that morning, but it was the first time I

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1 was getting to that area. He slowed down. Our car was
2 approached by an officer in uniform in another car who
3 rolled down his window and this officer and Sheehan had a
4 conversation. I just saw Sheehan take out a badge and
5 identify himself to the other officer, and the officer then
6 stopped. Detective Sheehan and I got out of the police car
7 and spoke for several minutes, less than three minutes, to
8 that uniformed police officer. That officer was -- I don't
9 know what his specific assignment was, but it was in the
10 nature of safeguarding the area of the crime scene. And he
11 pointed out to us some areas of significance on the roadway
12 that had to do with where the jogger had been attacked.
13

14 Q. After you had this conversation with the uniformed
15 officer and with Detective Sheehan, what happened next?

16 A. At that point Detective Sheehan asked Kevin
17 Richardson to step out of the radio car, and Richardson did.
18 Sheehan asked him if anything looked familiar to him. And
19 it was at that point that Richardson pointed to an area in
20 the roadway and said -- I have the exact words written down,
21 but I believe, "This is where" -- "this is where we took her
22 down," I have to look.

23 Q. Do you have something -- are you sure those are
24 the words or do you have something to refresh your
25 recollection?

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MR. MOORE: Objection.

THE COURT: She said she had something written down, she would have to look at to be sure those are the exact words.

If you have it, I'll let you look at it. You have it with you?

THE WITNESS: Yes.

A. Richardson at that point said, "This is where we got her."

Q. Was there any further conversation with Kevin Richardson at that point?

A. There were no other questions asked of him at that point.

Q. Did he say anything further?

A. No.

Q. What happened after he was asked that question and he gave that answer?

A. He got back into the car next to Detective Jonza. Kharey Wise was asked to step out of the car.

Q. And did Kharey Wise come to where you and Detective Sheehan were?

A. Yes, he did, which was just a few feet from the car.

Q. Was there any conversation with Kharey Wise at

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that time?

A. Sheehan said the same thing, "Does any of this look familiar to you?" And Kharey Wise pointed to the roadway, he said he was trying to get his bearings by light posts, and he said, "This is where they snatched her." And Detective Sheehan said, "Where were you," and Kharey Wise pointed south of the roadway to an area where you can see ball fields, and he said that he had been running from the ball fields to 102nd Street when they snatched her.

Q. Was there any further conversation with Kharey Wise at that location?

A. No.

Q. Were any other questions put to him?

A. No.

Q. Did he say anything else?

A. No, he did not.

Q. What happened after that exchange that you just testified to?

A. Kharey Wise got back in the car. The detectives, Detective Sheehan and I, got back in the car. The uniformed officer then, in his car, led us off the roadway down a very steep muddy incline which was north of the transverse, and he lead us -- it's an area that has a lot of trees and a lot of roots and stumps. And he led us in his car around

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through an open area to the bottom of a slope, and there was a muddy pathway at the bottom of the slope where both cars stopped.

Q. Was there any conversation -- what happened at the bottom of the slope where the car stopped?

A. Detective Sheehan and I got out of the car first. The uniformed officer met us again and pointed out to us where the -- the point in the mud where the young woman's body had been found and pointed to a location where some of her items of clothing had been found. Detective Sheehan and I, while the other three individuals were in the car, walked around that area and proceeded to walk a way up the slope back towards the paved roadway because the uniformed cop had pointed in that direction and had said other evidence had been found in that direction. And we started to walk that alone, we reached a point maybe a third of the way up -- back up that slope when we were caused to stop.

Q. What, if anything, did you see in that location?

A. There was a large tree, surrounded by a lot of leaves and branches and an astounding amount of what appeared to be dry blood.

Q. What, if anything, happened at that location?

A. Detective Sheehan and I stopped there and discussed the significance of that location between

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2 ourselves, and he then called to Detective Jonza and asked
3 Detective Jonza to send Kevin Richardson up to us.

4 Q. Did Kevin Richardson get out of the car at that
5 time?

6 A. Yes.

7 Q. And -- please continue.

8 A. Detective Jonza and both young men got out of the
9 car at that time. Again, nobody was handcuffed. Detective
10 Jonza stood next to the car with Kharey Wise and Kevin
11 Richardson walked the approximately 30 to 40 feet up to the
12 position at which Sheehan and I were standing.

13 Q. Let me just interrupt you for a moment. Was he
14 handcuffed at that time?

15 A. No, he was not.

16 Q. Was he escorted that distance from the car to
17 where you were?

18 A. No, he was not.

19 Q. Please continue.

20 A. Richardson came up to us and again Sheehan asked
21 him a question like do you recognize this area, does
22 anything here look familiar to you. And Kevin Richardson
23 pointed to an area northwest of this large tree and said,
24 "This is where it happened." And Detective Sheehan said,
25 "What happened?" And Kevin Richardson said, "The raping."

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1 That was, I believe, the only thing he was asked at that
2 location.
3

4 Q. And was that the only thing he said at that
5 location?

6 A. Yes.

7 Q. After that exchange, what, if anything, did Kevin
8 Richardson do?

9 A. Detective Sheehan said to Kevin, "Okay, go back to
10 the car, you can wait at the car." And Sheehan called out
11 to Detective Jonza, "Send Kharey up here." And the two
12 young men actually passed each other in walking from one
13 detective to the other.

14 Q. Did Kharey Wise come to the location where you and
15 Detective Sheehan were?

16 A. Yes.

17 Q. And was there any conversation with Kharey Wise at
18 that location?

19 A. Yes.

20 Q. What, if anything, was said to Kharey Wise?

21 A. As Kharey Wise approached us, Detective Sheehan
22 and I were uphill from him but that is further south,
23 actually in the park, so we were on the south side of this
24 large area of matted grass with a lot of bloody looking
25 matter, and before we could ask him anything, as Kharey

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approached us, he started muttering out loud, "Damn, damn, that's a lot of blood. Damn, this is really bad, that's a lot of blood."

Q. When he arrived at the location where you and Detective Sheehan were, did either of you ask him a question?

A. I think the first thing that Detective Sheehan said to him, as Kharey kept repeating -- and he did more than three or four times -- how much blood there was, Sheehan said something like, "Why does that surprise you," and Kharey said, "I knew she was bleeding but I didn't know how bad she was. It was really dark, I couldn't see how much blood there was at night."

Sheehan then asked Kharey was that area familiar, and he said, "This is where" -- "this is where we" -- he said "we" and then he said "they raped her." His story -- the only thing I knew about Kharey Wise with regard to the story he had told up to that point in time was that he had said at the precinct, not to me but I believe to Detective Sheehan --

MR. MOORE: Objection, your Honor.

THE COURT: Yes, objection sustained. That's not responsive to that question.

Go ahead.

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Q. Let me ask you this. Did Kharey Wise say anything either on his own or in response to a question about how the jogger came to the location that you were at?

A. Yes, he said that, "This is where they dragged her down."

Q. And did he say that in response to a question or did he say that spontaneously?

A. He said it in response to a question.

Q. Do you recall what the question was that he was answering?

A. What happened -- I believe Detective Sheehan was the one who was asking him questions. I believe the question was, "What happened here, why is there so much blood here?"

Q. Did he indicate in that statement who dragged her?

A. He -- he started to say "we" and he caught himself and he said, "they dragged her." He did not, nor was he asked specifically at that time to, name individual participants in the crime.

Q. Prior to coming to the scene at the 102nd Street Crossdrive with Kharey Wise that morning, did you have any information about what Kharey Wise had said to any other detective?

A. Yes.

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2 Q. And would you tell us what you had been informed
3 as to anything he might have said until that time?

4 A. I was told that although he admitted being present
5 at the time that the rape had occurred, that he had been
6 hiding behind a tree and not a participant.

7 MR. MOORE: Your Honor, I'm going to object
8 to that as hearsay unless she identifies who said
9 what.

10 THE COURT: It is hearsay but hearsay is
11 admissible.

12 MR. MOORE: I understand that. She has not
13 identified the author.

14 THE COURT: If she knows, I'll let her.

15 THE WITNESS: It was Sheehan who told me that
16 was Kharey Wise's statement.

17 Q. Were any questions put to Kharey Wise at the scene
18 then based on the information you just testified to that you
19 had had prior to going there?

20 A. Detective Sheehan asked him which tree, and he was
21 unable -- he looked around and was unable to find a tree
22 that he claimed supported the position and angle from which
23 he had seen events.

24 Q. Did you have any further conversation with Kharey
25 Wise at that location?

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2 A. No.

3 Q. And approximately how long were you present at
4 that scene with Kharey Wise?

5 A. We were there altogether from the time we got out
6 of the police car until we got back, again, maybe the ten to
7 fifteen minute range. We were hurried up there because of
8 the presence of a television news team that was approaching
9 down the ravine and we wanted to get --

10 MR. MOORE: Objection, it is not being
11 responsive.

12 A. -- out of there.

13 THE COURT: I'll allow it.

14 Q. When you say -- I believe you say it was ten or
15 fifteen minutes. Was that from the time you first arrived
16 and got out up on the roadway or are you referring to only
17 the time down below?

18 A. I would say there were three or four -- three
19 minutes or so on the roadway, three or four minutes driving
20 down to the scene, and I think the whole thing, out of the
21 car with both defendants, probably couldn't have taken ten
22 minutes.

23 Q. After the conversation that you just testified to
24 happened with Kharey Wise, what was the next thing that you
25 did?

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2 A. We got back in the car and tried to turn around in
3 the mud and get out of the ravine. When we got back to the
4 roadway and were leaving the park, I was aware that one of
5 the statements that had been made earlier was that on
6 leaving the park, the group of kids who left with Antron
7 McCray had gone out the west side of the park and had been
8 in a group, that Antron had a pipe at that point and had
9 been knocking light ** bulbs out of a building where there
10 was a construction site on 96th Street, that there was
11 scaffolding, that there were light bulbs hanging from the
12 scaffolding, that Antron had been running along, jumping and
13 breaking light bulbs. And I asked Kharey if he had seen
14 that and he said yes. And I asked him if he could show us
15 the location at which that happened, and he said yes.

16 Q. And where did you go then?

17 A. And he directed Detective Sheehan to 96th Street
18 and Central Park West. On the northwest corner there was a
19 very obvious scaffolding around what looked like an
20 apartment building, and we stopped the car. I was the
21 closest one to the sidewalk and I got out on the right side
22 and there were, in fact, every third or fourth bulb was
23 broken. And I got back in the car, having made that
24 observation, and we then drove around up Columbus Avenue and
25 right back to the 24th Precinct.

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2 Q. Did Kharey Wise get out of the car at that
3 location?

4 A. No, he did not.

5 Q. Did Kevin Richardson get out of the car at that
6 location?

7 A. No, he did not.

8 Q. Was Kevin Richardson asked any questions about the
9 light bulbs?

10 A. No.

11 Q. Did there come a time after the trip that you just
12 described to the 102 Street Crossdrive that you went to the
13 crime scene for a second time?

14 A. Yes.

15 Q. And at approximately what time was that?

16 A. I'd say approximately 8:30 that morning.

17 Q. And who was present when you went to the crime
18 scene at about 8:30 that morning?

19 A. At that time you, yourself, were present, Mr.
20 Clements, Detective Sheehan was again the driver and Michael
21 Mannion, who is the head of our video unit.

22 MR. BURNS: I'm sorry, what time was this?

23 THE WITNESS: About 8:30 that Friday morning.

24 Q. Do you recall whether any of the suspects in the
25 investigation accompanied you on that trip?

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2 A. In our car they did not. I believe that Kevin
3 Richardson went in a separate car with Detective Hartigan.

4 Q. Did you have any conversations with Kevin
5 Richardson at the scene at that time?

6 A. I did not.

7 Q. I would like to please direct your attention now
8 to 10:30 p.m. on the evening of April 21st of 1989. Were
9 you at the 24th Precinct on that time -- at that time on
10 that date?

11 A. Yes.

12 MR. MOORE: I'm sorry?

13 A. At the 24th Precinct.

14 Q. Approximately -- at that time, on that date, where
15 were Kharey Wise, Kevin Richardson, Steve Lopez, Raymond
16 Santana, Antron McCray, Clarence Thomas and Yusef Salaam?

17 A. They were for the first time in a holding pen on
18 the 2nd floor at the rear of the squad room.

19 MR. BERMAN: Objection to "the first time."

20 THE COURT: Yes, objection sustained. She
21 just asked where they were at that time.

22 A. In a holding pen at the -- on the 2nd floor squad
23 room of the precinct in the rear of the squad room.

24 Q. Did you hear any conversation coming from the
25 holding cell at about that time, on that date?

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2 A. Yes.

3 Q. Would you please tell us where you were at the
4 time that you heard conversation coming from the cell?

5 A. I was less than eight feet away from the cell, I
6 had gone --

7 MR. MOORE: I'm sorry, how many feet?

8 A. Less than eight feet from the cell. I had gone to
9 use a telephone book which was on a desk, the closest desk
10 adjacent to the cell.

11 Q. With the Court's permission, I would ask you to
12 please step down and approach People's 6 in evidence. If
13 you would please just point to where you were at the time
14 that you heard conversation in the cell?

15 A. I was standing in an area right there.

16 Q. Would you please just point where the cell is?

17 A. The cell is here.

18 Q. Thank you very much, you may resume your seat. At
19 the time that you heard conversation, were you able to see
20 any people who were in the cell?

21 A. Yes.

22 Q. Would you please describe what conversation you
23 heard?

24 A. I heard Kharey Wise, who was standing closest to
25 me, with his side to me, talking. I don't know if it was to

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one person in the group or generally, but he said -- he was laughing and he said, "Did you tell them the one about the guy who was jogging and said you want to race?" And when he said that, somebody in the cell, who's voice I can't identify and didn't see, was also laughing and said, "Yeah I told them that one too, it was really funny." And there was a lot of laughter from the pens at that time.

Q. When you say that Kharey Wise spoke, were you able to see him speaking?

A. Yes.

Q. And were you able to recognize his voice?

A. Yes.

Q. After he said, "Did you tell them about the guy who said" -- or, "the jogger who said do you want to race," what answer, if any, did you hear from another voice?

A. "Yeah, I told them that too."

Q. Did you hear Kharey Wise say anything further after the voice you could not identify said "yeah"?

A. Yeah, he was laughing, he said, "Yeah, that was really funny."

Q. "Yeah, that was really funny" was said by whom?

A. Wise.

Q. Other than the conversation you just described that you heard and saw Kharey Wise speaking, were you able

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to recognize any of the other voices from anybody else in
the cell?

A. No.

Q. Did you see anybody else speaking during that
time?

A. I -- I could hear a lot of people speaking, I
could not see who was saying what.

MS. LEDERER: Thank you very much. I have no
further questions.

MR. BURNS: Judge, this a good time?

THE COURT: Okay. We'll take a short recess.

o0o

(The Court declares a recess. At the
conclusion of the recess, the following takes
place in open court:)

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1 FAIRSTEIN - PEOPLE - CROSS - MOORE

2 COURT CLERK: Hearings continued.
3 People of the State of New York versus
4 Kharey Wise, Yusaf Salaam, Antron McCray,
5 Kevin Richardson, Steve Lopez, Michael
6 Brisco, Raymond Santana. Indictment 4762
7 of '89.

8 (Whereupon the witness, Linda
9 Fairstein, resumed the witness stand.)

10 CROSS EXAMINATION

11 BY MR. MOORE:

12 Q Good morning, Miss Fairstein.

13 A Good morning.

14 Q My name is Collin Moore, and I'm the
15 attorney for Kharey Wise. I'm going to ask you
16 questions pertaining to Kharey Wise.

17 Now, you have testified that on April 21st,
18 at about 7 p.m. you arrived at the 24th Precinct; am
19 I correct?

20 A No, you are not correct. You said that I
21 arrived at the 24th Precinct at 7 p.m. No.

22 Q What time did you arrive?

23 MS. LEDERER: Objection.

24 THE COURT: Objection sustained.

25 Q Did there come a time on April 21st that

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FAIRSTEIN - p^{PL} E- CROSS - MOORE

you went to the 24th Precinct?

MS. LEDERER: Objection.

THE COURT: Yes or no?

A Yes.

Q And did there come a time when you saw Kharey Wise?

A Yes.

Q Approximately what time was that?

MS. LEDERER: Objection.

THE COURT: No, I'll let her answer.

A I don't recall seeing him much before 7:00 in the morning.

Q You say him at about 7 a.m., am I correct?

A That's correct.

Q Now, prior to seeing him on the 21st, did you see him at any time prior to this?

MS. LEDERER: Objection.

THE COURT: Sustained.

Q Now, what was your role in this investigation, Miss Fairstein?

MS. LEDERER: Objection.

THE COURT: I'll let her answer.

A On the 20th of April, the case had been assigned to Miss Lederer who works with me. I

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1 FAIRSTEIN - PEOPLE - CROSS - MOORE
2 offered to go with her to the stationhouse to assist
3 her if that became necessary because the
4 investigation had occurred in Central Park, and I
5 had a lot of familiarity with crime scenes in the
6 park and to see if she would need any -- as I called
7 it -- gopher, assistance, any help I could give her
8 while she was doing the massive amount of work, work
9 that awaited her there.

10 Q You stated that the decision was made to go
11 into Central Park that morning.

12 A That's right.

13 Q Why did you find it necessary to go into
14 Central Park that morning?

15 A To relate the statements that had been
16 given to a particular location in the Park.

17 Q To relate the statements, you said?

18 A Yes.

19 Q Now, you were aware that Kharey Wise had
20 made a statement prior to seeing him on the 21st?

21 A I was aware of a statement that he made.

22 Q Were you aware of the fact that he had, in
23 fact, made two statements?

24 MS. LEDERER: Objection.

25 THE COURT: I'll let her answer, if

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1 FAIRSTEIN - PEOPLE - CROSS - MOORE

2 she's aware he made two statements.

3 A I was aware that he had talked to the
4 police and I was aware of one part of a statement,
5 yes, sir.

6 Q One part of one statement. What part of
7 the statement are you referring to?

8 A That Kharey Wise had said he had been
9 present when the female jogger was attacked, and
10 that he had been hiding behind a tree when that
11 attack occurred.

12 Q And you were not -- I'm sorry. Which
13 officer gave you that information?

14 MS. LEDERER: Objection.

15 THE COURT: Sustained.

16 Q Well, did you receive that information from
17 a particular individual?

18 MS. LEDERER: Objection.

19 THE COURT: As compared to --

20 Q Did you have a look at the statement that
21 Kharey Wise made?

22 A I never looked at any written statement,
23 no.

24 Q And where did you obtain the information
25 that he was behind a tree?

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1 FAIRSTEIN - PEOPLE - CROSS - MOORE

2 MS. LEDERER: Objection.

3 THE COURT: I'll let her answer.

4 A A detective said to me that that's one of
5 the things Kharey Wise had said.

6 Q Which detective told you that?

7 MS. LEDERER: Objection.

8 THE COURT: No, I'll allow it.

9 A Michael Sheehan.

10 Q And Detective Sheehan did not inform you of
11 the fact that Kharey Wise had also said before that
12 he was not there and had not seen the jogger? Did
13 Detective Sheehan tell you that?

14 A No.

15 Q Now, there came a time when you saw Kharey
16 Wise in the precinct; am I correct?

17 A Yes, sir.

18 Q And you said he was by himself in a room?

19 A He was by himself in a large room in which
20 a lot of other people were present.

21 Q Right. Do you remember where the room was
22 located? What part of the precinct?

23 A Yes.

24 Q And where was that?

25 A On the second floor of the precinct, of the

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1 FAIRSTEIN - PEOPLE - CROSS - MOORE

2 room we had referred to as the Detective Squad Room.

3 Q Can you indicate on the map that is up
4 there as Exhibit 6, exactly where you saw Kharey
5 Wise when you first observed him?

6 (Witness steps from the stand and
7 approaches People's 6 in evidence.)

8 A I believe he was seated at -- in a chair
9 next to this desk.

10 Q Indicating that large room?

11 A Yes, he was in this large room.

12 Q Fine. Thank you.

13 (Witness resumes the stand.)

14 Q Was there anyone seated next to him?

15 A Not immediately next to him, no.

16 Q Well, was there anyone situated in the
17 vicinity around him?

18 MS. LEDERER: Objection.

19 THE COURT: I'll allow it.

20 A There were a lot of people in the room.
21 There was no one close enough for him to talk to,
22 for example, without raising his voice and calling
23 across the room. He was by himself.

24 Q Well, were there any other police officers
25 who were in the vicinity of where he was seated?

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1 FAIRSTEIN - PEOPLE - CROSS - MOORE

2 A There were other police officers in the
3 room. I didn't see anyone close to him.

4 Q Now, at the time when you saw him, did you
5 know whether he was under arrest or not?

6 MS. LEDERER: Objection.

7 THE COURT: Objection sustained.

8 Q At the time when you saw him, was he under
9 arrest?

10 MS. LEDERER: Objection.

11 THE COURT: Objection sustained.

12 Q At the time when you saw him, Miss
13 Fairstein, was he free to leave or enter the
14 precinct?

15 A That was not up to me when I saw him.

16 Q No, I didn't ask you that. Do you know
17 whether he was free to leave the precinct if he so
18 desired?

19 A I don't know the answer to that.

20 Q Now, you stated on direct that your first
21 statement to him was that you read him the Miranda
22 rights, am I correct?

23 MS. LEDERER: Objection.

24 THE COURT: I'll let her answer if
25 that is the first thing.

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3081

1 FAIRSTEIN - PEOPLE - CROSS - MOORE

2 A The first thing I believe I did, I
3 testified, was I introduced myself to him and
4 explained who I was and why I was there.

5 Q You explained to him that you are an
6 Assistant District Attorney?

7 A That's correct.

8 Q And that you were here to investigate the
9 Central Park rape?

10 A I was assisting in the investigation of the
11 cases that had occurred in the park.

12 Q And did you mention specifically the female
13 jogger?

14 A Yes.

15 Q Now, after you told him that what -- did he
16 say anything to you?

17 A He said, "Yeah," and "Okay."

18 Q And what did you say to him?

19 A I said that I was going to read him his
20 Miranda warnings. "I'm going to read your rights."

21 Q So that was the second thing that you told
22 him, am I correct?

23 A Right.

24 Q You read him his rights.

25 Now, did you ask him, in the course of your

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T2-fr

3082

1 FAIRSTEIN - PEOPLE - CROSS - MOORE
2 conversation, whether he had had anything to eat on
3 that particular night?

4 A At that point in time, no, I believe --

5 Q Just yes or no.

6 A Had he --

7 Q At that time, did you ask him, Kharey Wise,
8 did you have anything to eat or to drink, did you?

9 A Eat or drink when, sir?

10 THE COURT: Anytime?

11 Q At any time prior.

12 THE COURT: After you introduced
13 yourself to him and told him you were going
14 to read his rights, did you ask him whether
15 he had had anything to eat?

16 THE WITNESS: I did not ask him that.
17 I served him myself a donut.

18 Q Did you ask him if he had slept that night?

19 A I did not ask him if he had slept that
20 night.

21 Q Did you ask him if he was in good health?

22 A No. He appeared to be in quite good
23 health.

24 Q Did you ask him that?

25 A I saw no reason to, sir.

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T2-fr

3083

1 FAIRSTEIN - PEOPLE - CROSS - MOORE

2 Q Did you or did you not?

3 A I did not.

4 Q Now, there came a time when you stated that
5 you read him the rights from a card; am I correct?

6 A Yes.

7 MR. MOORE: Could I have a look at
8 People's 34?

9 MS. LEDERER: Yes.

10 Q Is this the exact card that you read him
11 his rights from?

12 A I believe it is.

13 Q You believe it, but you are not sure?

14 A I'm sure it is. I carry one of those cards
15 in my wallet. It is the only card like that in my
16 wallet. I have not removed it from my wallet. It
17 is the same card.

18 Q You know whether this is, in fact, the most
19 recent interpretation of the Miranda warnings or
20 not?

21 MS. LEDERER: Objection.

22 THE COURT: Sustained.

23 Q Now, you stated on direct that you asked
24 him, "You have the right to remain silent", yes or
25 no; am I correct?

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T2-fr

3084

1 FAIRSTEIN - PEOPLE - CROSS - MOORE

2 A Yes. I didn't say "yes or no". I said,
3 "Do you understand?" He said, "Yes."

4 Q And then I think you read him six or five
5 different rights; am I correct?

6 A Correct.

7 Q Apart from reading him the rights, did you
8 make an attempt to explain what the rights were?

9 A Beyond --

10 Q Beyond reading from a piece of paper, did
11 you make any attempt to explain to him that he had
12 certain rights, and to explain what those rights
13 were?

14 A That's what I just did by reading it to
15 him.

16 Q You felt that just reading it to him was
17 enough to explain it to him?

18 MS. LEDERER: Objection.

19 THE COURT: Objection sustained.

20 Q Apart from what is written here, did you
21 make any attempt to explain his constitutional
22 rights? Yes or no?

23 A By reading them I did explain his
24 constitutional rights, yes.

25 Q So you read him his rights and you also

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T2-fr

3085

1 FAIRSTEIN - PEOPLE - CROSS - MOORE

2 explained what they were?

3 MS. LEDERER: Objection.

4 THE COURT: Objection sustained.

5 I understand what she said.

6 Q Did you tell him, Kharey, you have a right,
7 you or your mother have a right to have an attorney
8 in this precinct here? Did you tell him that?

9 A I made no reference to his mother.

10 Q Well, you were aware of the fact that he
11 was an adolescent, weren't you?

12 A No.

13 Q You were aware of the fact he was fairly
14 young, weren't you?

15 A I was aware of the fact he was over the age
16 of 16.

17 Q And that makes him an adult?

18 MS. LEDERER: Objection.

19 THE COURT: Sustained.

20 Q You were -- were you aware of the fact that
21 he was attending high school at the time?

22 A I was not aware of that fact.

23 Q By the way, prior to speaking to Kharey
24 Wise, did you know how long he had been at the
25 precinct?

11/13/89

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T2-fr

3086

1 FAIRSTEIN - PEOPLE - CROSS - MOORE

2 MS. LEDERER: Objection.

3 THE COURT: I'll let her answer.

4 A I did not know then.

5 Q Did you inquire from any of the detectives
6 how long he had been there?

7 A No. I had a range. I knew he was not
8 there when I first arrived, and that he had come in
9 at some time thereafter. I did not inquire the
10 hour.

11 Q Did you attempt to find out from any of the
12 officers the circumstances under which he had been
13 brought in?

14 MS. LEDERER: Objection.

15 THE COURT: I'll let her answer.

16 A No, I did not.

17 Q Now, there came a time when you and
18 Detective Jonza and Detective Sheehan and Kevin
19 Richardson went to the park; am I correct?

20 A Yes.

21 Q And you stated you took about ten or maybe
22 fifteen minutes to get to the park?

23 A Yes.

24 Q Well, the 24th Precinct is about four
25 blocks from Central Park; isn't it?

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NYCLD_015226

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T2-fr

3087

1 FAIRSTEIN - PEOPLE - CROSS - MOORE

2 A Yes.

3 Q And did you -- did the Detective drive
4 straight to Central Park from the Precinct?

5 A Stopping for red lights.

6 Q And apart from stopping for red lights --

7 A There's no direct way in at 102nd. We had
8 to go north. We had to go up to, I believe 110th to
9 get in and to come down through the park, and I
10 would say driving at average speed, with the number
11 of traffic lights and the route we had to take, that
12 it took approximately ten minutes.

13 Q Now, you also stated you had a conversation
14 with Kharey Wise on the way to the park, am I
15 correct?

16 A There was talk -- general talk in the car.

17 Q Could you tell us what the general talk
18 was?

19 A The detectives and I were talking about
20 returning to the park, we had another crime scene to
21 go to and at one point Kevin Richardson was talking
22 about his family. Kharey was talking about the sun
23 was up and that it was daylight outside, and things
24 looked a lot different in daylight.

25 I don't remember anything more substantive

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T2-fr

3088

1 FAIRSTEIN - PEOPLE - CROSS - MOORE

2 than that.

3 Q Well, did you ask him any questions?

4 A No, sir.

5 Q Now, there came a time when you arrived at
6 the 102nd Street crossdrive, am I correct?

7 A Yes.

8 Q Now, you had also stated in direct that you
9 had tried to avoid having both defendants there at
10 the same time, am I correct?

11 A No, sir. Having both of them talk about
12 the event or the occurrence in front of each other.
13 Obviously we had brought them together at the same
14 time.

15 Q And they were in the car at the same time?

16 A That's right.

17 Q And in fact, there came a time when you
18 called first Kevin Richardson to relate what he said
19 and then you called Kharey Wise; am I correct?

20 A Yes.

21 Q And in fact, when you called them, both of
22 them were outside of the car, am I correct?

23 A At first, at arriving at the transverse?

24 Q At any time after you arrived at the
25 transverse, did there not come a time when both

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FAIRSTEIN - PEOPLE - CROSS - MOORE

Kevin Richardson and Kharey Wise were both outside the car?

A I remember Kevin getting out of the car first. That they were ever out together it's possible, but I remember we asked for Kevin to come and talk to us first, and Kevin got out of the car first.

Q And then you called Kevin over to where you were, am I correct?

A Yes.

Q And how far was he from where the car was parked?

A I would say not more than 20 feet.

Q So it was possible, was it not, for Kharey, standing outside of the car, to overhear the conversation that you were having with Kevin?

MS. LEDERER: Objection.

Misstating the testimony.

THE COURT: I don't know. I'll let her answer.

Q Was it not possible, in fact, for Kharey Wise to overhear what Kevin Richardson was telling you?

A I don't believe --

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NYCLD_015229

P-APP001174

T2-fr

3090

1 FAIRSTEIN - PEOPLE - CROSS - MOORE

2 THE COURT: How far away?

3 THE WITNESS: 20 feet when we first
4 started talking to Kevin, and my
5 recollection is that Kharey was still
6 inside the car.

7 Q You cannot recall testifying that there
8 came a time when you called, I think it was Kevin
9 Richardson and Kharey Wise also came out of the car?

10 A I believe that was at -- if you look at my
11 testimony, that was at the bottom of the ravine

12 Q That is correct.

13 A Well, then there was more than 50 feet
14 separating us. The detective and I were a third of
15 the way up the hill when we were talking to Kevin,
16 and that was at a distance you could not hear
17 conversation being had by two individuals at the
18 car, and the three of us standing by the tree with
19 the blood.

20 Q Did you make an attempt to check out
21 whether in fact you could overhear conversations
22 from that distance?

23 A Yes.

24 MS. LEDERER: Objection.

25 THE COURT: I'll let her answer.

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T2-fr

3091

1 FAIRSTEIN - PEOPLE - CROSS - MOORE

2 A I didn't attempt to. Detective Jonza was
3 standing next to the car with Kharey while Sheehan
4 and Richardson and I were up the hill with Kevin and
5 you could not hear conversation between Jonza and
6 Wise.

7 Q Now, there came a time when you called
8 Kharey Wise out of the car; am I correct?

9 A There were two times.

10 Q Okay, the first time was when you were on
11 the hill and the second time was when you were in
12 the ravine, is that correct?

13 A Yes.

14 Q Now, with regard to the first time you
15 called him out of the car, when you were on that
16 hill, what did he say -- what did you say -- I'm
17 sorry, withdrawn.

18 What did Detective Sheehan say and what did
19 Kharey Wise respond?

20 A Sheehan asked him if this area looked
21 familiar to him, is the way I recall the question
22 being asked.

23 Q And what did he say?

24 A I can't recall exactly. That's what I had
25 to look at my notes for this morning. If you want

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T2-fr

3092

1 FAIRSTEIN - PEOPLE - CROSS - MOORE
2 his exact language, I would like to look at my
3 paper.

4 Q By the way, when did you make those notes?

5 A I made those notes --

6 MS. LEDERER: Your Honor, excuse me.
7 Could I ask, Counselor, which notes are you
8 referring to?

9 THE COURT: The witness said she had
10 to refer to some notes this morning I
11 assume she's referring to those notes.

12 Q Can I have an indication of the notes
13 you're referring to?

14 A The note to which I'm referring is the
15 piece of paper, single piece of paper that says, "K.
16 Richardson, 7 a.m." The comment made on the roadway
17 is, "This is where we got her."

18 Q Just one second. Could I just have a look
19 at the note?

20 A Yes.

21 Q Now, with regard to these notes to which
22 you're referring, when did you make those notes?

23 A I believe I reduced that event to writing
24 to that piece of paper on the Monday following.

25 Q And the 21st was -- do you recall what day

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P-APP001177

T2-fr

3093

1 FAIRSTEIN - PEOPLE - CROSS - MOORE
2 that was, of the week?

3 A Yes, the 21st was a Friday.

4 Q So the notes that had to do with your
5 conversation with Kharey Wise, particularly, you
6 reduced that to writing on the following Monday; am
7 I correct?

8 A That's correct.

9 Q Now, did you take any notes as you were
10 speaking to Kharey Wise and Kevin Richardson?

11 A At the crime scene?

12 Q At the crime scene.

13 A No, I did not.

14 Q So that the first time you reduced it to
15 writing was the Monday following; am I correct?

16 A Yes.

17 Q And was this based upon anything that you
18 had written or was it based upon your recollection?

19 A My recollection.

20 Q Now, you stated that Detective Sheehan
21 asked him if he was familiar with this area, am I
22 correct?

23 A Yes.

24 Q And what did he say?

25 A "This is where we got her."

11/13/89

NYCLD_015233

P-APP001178

T2-fr

3094

1 FAIRSTEIN - PEOPLE - CROSS - MOORE

2 Q Did he ask him anything else?

3 A I don't believe he did.

4 Q Now --

5 THE COURT: Now, are you asking about
6 Wise or Richardson?

7 MR. MOORE: I'm speaking of Wise.

8 THE WITNESS: Wise said, "That's where
9 we snatched her." And I believe Sheehan
10 asked, "Where were you?" And he pointed,
11 Wise pointed south of the transverse
12 roadway towards the ballfield, and said
13 that's where he had been coming from.

14 Q Now, Miss Fairstein, did he say, "That's
15 where we snatched her," or "That's where they
16 snatched her"?

17 I'm just asking you, based upon your
18 recollection, without looking at your notes, do you
19 have an independent recollection as you sit now of
20 what Kharey Wise told you on that particular day?

21 A Yes, on that particular day he several
22 times used the expression, "we" and corrected
23 himself, and said "they." Some of the events he
24 referred to, he clearly meant "we" because he
25 referred to events he placed himself in the middle

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NYCLD_015234

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T2-fr

3095

1 FAIRSTEIN - PEOPLE - CROSS - MOORE

2 of.

3 Q I'm not asking you your interpretation of
4 what he said. I'm asking you what did he exactly
5 say the first time Detective Sheehan asked him that
6 question?

7 THE COURT: What point are you asking
8 about?

9 Q When Sheehan first asked him the question,
10 "Are you familiar with this area," what did he say?

11 A I like to look at my notes. I believe he
12 said, "they" at that point.

13 THE COURT: Do you have your notes?

14 THE WITNESS: Yes. He said, "That's
15 where they snatched her."

16 Q A moment ago you said, "we" so that your
17 recollection is not clear as perhaps -- well --

18 A As it was when I wrote these things down?

19 THE COURT: That's not a question. It
20 does not require an answer.

21 What's the question?

22 Q So he indicated that they snatched her; is
23 that correct? Is that what he told Sheehan?

24 MS. LEDERER: Objection.

25 THE COURT: She just answered that

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NYCLD_015235

P-APP001180

T2-fr

3096

1 FAIRSTEIN - PEOPLE - CROSS - MOORE
2 question.

3 Q Now, after that, did he tell Sheehan
4 anything else while you were up the roadway?

5 A Anything else? Only where he had been
6 first. That he said, "I saw her when we were coming
7 across here. When we were running across the
8 ballfield to the road."

9 Q He told that to Sheehan?

10 A In my presence, yes. Sheehan asked the
11 question. I was present.

12 Q Is that reflected anywhere in your notes
13 with regard to Kharey Wise?

14 A I believe it is. Yes.

15 Q You indicate in your notes, do you not,
16 that he pointed out where he was in the ballfield
17 and where they snatched her?

18 A Yes.

19 Q Now, there came a time when you went into
20 the ravine, when you drove into the ravine, am I
21 correct?

22 A Yes.

23 Q And Sheehan called him again out of the car
24 while you were --

25 A Sheehan --

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NYCLD_015236

P-APP001181

T2-fr

3097

1 FAIRSTEIN - PEOPLE - CROSS - MOORE

2 Q Did Detective Sheehan call him out of the
3 vehicle?

4 A Yes.

5 Q What did Sheehan tell him and what did he
6 say to Sheehan?

7 A When Kharey Wise was -- Kevin Richardson
8 came up to the area where we were standing first.
9 "We" being Sheehan and myself, near the large tree,
10 bloody area. Kevin Richardson came up first. When
11 Kevin was finished, which was a matter of a minute
12 or two, Detective Sheehan called out to Detective
13 Jonza, who was standing at the car, "Send Kharey
14 Wise up now." So Kharey Wise started to walk past
15 Kevin on the way and before he got close enough for
16 us to ask him any questions, he was walking up the
17 slope where there was obvious ground discoloration,
18 a lot of dried blood, and then Kharey Wise started
19 talking before Sheehan asked him a question.

20 Q All right. Now, at that time when Sheehan
21 called out to Jonza to send Kharey Wise, was he in
22 the car or outside of the car?

23 A I believe -- I believe he was standing
24 outside the radio car, next to Detective Jonza.

25 Q Now, a few minutes ago I had asked you the

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T2-fr

3098

1 FAIRSTEIN - PEOPLE - CROSS - MOORE
2 question whether it was possible for Kharey Wise to
3 overhear the conversation that you were having with
4 Kevin Richardson; am I correct?

5 MS. LEDERER: Objection.

6 THE COURT: Yes, you did ask that
7 question.

8 Q And you had indicated that no, he could not
9 have heard that conversation; am I correct?

10 A I said I didn't believe it was possible.

11 Q But did you not say a moment ago that
12 Detective Sheehan said to Jonza, "Send Kharey Wise
13 over," and Jonza heard what he said?

14 A No, I did not say it. I said he called to
15 Detective Jonza, he actually had to put his hand to
16 his mouth and say, "Augie, send Kharey Wise up
17 here."

18 Q And the fact is Jonza heard it, didn't he?

19 MS. LEDERER: Object to the raising of
20 the voice.

21 THE COURT: I'll allow it. Did he
22 come over after that?

23 THE WITNESS: Yes.

24 Q So, Jonza heard what she had said. Did
25 Jonza not hear?

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NYCLD_015238

P-APP001183

T2-fr

3099

1 FAIRSTEIN - PEOPLE - CROSS - MOORE

2 MS. LEDERER: Objection.

3 THE COURT: Presumably.

4 Q Now, you had stated in your direct
5 testimony that Kharey Wise said something to the
6 effect about "Damn, that's a lot of blood on the
7 ground," am I correct?

8 A Yes.

9 Q And you had also stated it was obvious to
10 you that it was blood that was on the ground, am I
11 not correct?

12 A It appeared to me to be blood.

13 Q What else did he say apart from the fact
14 that there was blood on the ground?

15 A He said, "it's a lot of blood," repeated
16 his expression, and then said, "it's really bad,
17 it's really bad."

18 He repeated that sentence, and those phrases
19 four or five times as he walked the area.

20 Q In those phrases that he uttered, I mean he
21 did not say, did he, that I cut the woman, or I
22 caused her to bleed, did he?

23 A No, he did not.

24 Q And he didn't give you the names of anyone
25 at that time who had caused her to bleed, did he?

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NYCLD_015239

P-APP001184

T2-fr

3100

1 FAIRSTEIN - PEOPLE - CROSS - MOORE

2 A He was not asked any of those questions at
3 that time.

4 Q So he -- now, did he say that he knew she
5 was bleeding? Did he ever state that?

6 A Yes, he did state that.

7 Q Did Detective Sheehan ask him any questions
8 after that, after he said I knew she was bleeding?

9 A Yes.

10 Q What question did he ask him?

11 A Well, he asked him before, what elicited
12 that response was, "Why are you surprised?" And
13 Kharey said, "I knew she was bleeding. I knew she
14 was bleeding, but it was dark, I couldn't see how
15 bad it was last night." And then Sheehan went on to
16 ask him what was familiar about the area, and that
17 is when he used the expression, and corrected
18 himself -- I can't editorialize or change his
19 phrasing -- "That's where we -- I mean that's where
20 they got her." Pointing to the area where the blood
21 was and saying, "That's where she was raped."

22 Q Now, during this period of time when Kharey
23 Wise was saying, "She was bleeding. That's where
24 she was raped," did you or Sheehan ask him who the
25 "she" he was referring to?

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NYCLD_015240

P-APP001185

T2-fr

3101

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FAIRSTEIN - PEOPLE - CROSS - MOORE

2

A By name?

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4

Q Did you ask him, are you talking about the female jogger? Did you ever ask him that question?

5

6

A I told him that's why we were going to the scene.

7

8

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10

11

Q I did not ask you what you had told him some half-hour before. He was saying allegedly, I knew she was bleeding, did you and Sheehan ever say is that the female jogger, did you ever ask him that question?

12

13

A Our entire conversation with him revolved around the female jogger.

14

15

16

Q Did you ask him that question whether that "she" referred to the female jogger at the scene, did you or did you not?

17

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23

A At the scene we certainly talked in his presence that the whole conversation -- we were there for that purpose. We said, "that's where the body of the young woman who had been jogging was found." When one of them made a reference to the rape, I said "This is where the girl was raped." That's who we were talking about.

24

25

Q You assumed that that is what he was referring to, didn't you?

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P-APP001186

T2-fr

3102

1 FAIRSTEIN - PEOPLE - CROSS - MOORE

2 A No, I began my conversation with him at the
3 stationhouse by telling him that's who we were
4 referring to, and that's why we were going to that
5 particular location in the park where that young
6 woman's body had been found.

7 Q You have not answered my question.

8 A I think I have, sir.

9 Q After he said, "she" did you ever ask him
10 are you talking about the female jogger? Did you
11 ask him that question, yes or no?

12 THE COURT: That specific question.

13 A Not after he answered the question that I
14 knew referred to the female jogger.

15 Q So the answer is no?

16 A Yes, sir.

17 Q Now, you stated that he said, "we" or
18 "they" at a particular point in time; am I correct?

19 A Yes.

20 Q Well, did you say Kharey, is it we or is it
21 they who dragged her down here? Did you ever ask
22 him that question?

23 A I did not.

24 Q Did Sheehan ever ask him that question
25 there?

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NYCLD_015242

P-APP001187

T2-fr

3103

1 FAIRSTEIN - PEOPLE - CROSS - MOORE

2 A In my presence, at the scene, he did not.

3 Q Now, on direct you were asked a question,
4 "Was this area familiar to you," that is, Sheehan
5 asked him, and he said, "This is where we" or "they
6 raped her," was that your response? Did you testify
7 to that on direct, that Kharey Wise said, "This is
8 where 'we' or 'they' raped her"?

9 A Raped her or got her.

10 Q Well, is there a difference? What did he
11 say? "This is where we or they got her?"

12 A You want the exact reference I would like
13 to look at my notes.

14 Q No, I'm speaking to what you testified on
15 direct. Did you not recall testifying Kharey Wise
16 said this is where we or they raped her?

17 MS. LEDERER: Objection.

18 THE COURT: I'll allow it.

19 Q Do you recall testifying to that?

20 A I don't recall specifically that question
21 and answer. I'm happy to have it read back.

22 Q I'd like you to look at your notes and to
23 indicate whether in fact that is correct or not.

24 MS. LEDERER: Objection.

25 THE COURT: What was correct?

11/13/89

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P-APP001188

T2-fr

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FAIRSTEIN - PEOPLE - CROSS - MOORE

MR. MOORE: That he in fact stated
this is where we or they raped her.

THE COURT: I'll let her look.

Q Is that reflected in your notes?

A My notes say Kharey said, "This is where
the rape was. I mean they dragged her down here."

Q There is a difference --

MS. LEDERER: Objection.

THE COURT: Sustained.

Q There is no reference in your notes that
say this is where we or they raped her, is that
correct?

A There is no reference to that in my notes.

Q Now, I'm looking at one page of your notes.
Is there another page that pertains to this
particular conversation with Kharey Wise?

A Yes, there is a page two, the page about
the lightbulbs and the laughter and the comment in
the pens.

Q May I just have a look at that?

A Sure.

Q Thank you. Now you had also stated that
there was a conversation between Sheehan and Wise
about a tree in the park, am I correct?

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3105

1 FAIRSTEIN - PEOPLE - CROSS - MOORE

2 A Right.

3 Q What did Sheehan say and what did Kharey
4 Wise say?

5 A Sheehan asked him to point out the tree
6 behind which he claimed to have been hiding, and
7 watching this and Kharey mainly looked around for
8 several minutes, and was unable to pick a tree.

9 Q Well, would it be true to say that you were
10 skeptical about the fact that Kharey Wise was hiding
11 behind a tree?

12 MS. LEDERER: Objection.

13 A At the time --

14 THE COURT: Objection sustained.

15 Q Now, is that conversation reflected in your
16 notes?

17 A No, it was negative.

18 Q Well, did you think it was significant
19 enough to record in your notes?

20 MS. LEDERER: Objection.

21 THE COURT: She didn't apparently
22 record it.

23 Q Now, there was no further conversation
24 between Kharey Wise and Sheehan or between Kharey
25 Wise and yourself in the park that morning, was

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T2-fr

3106

1 FAIRSTEIN - PEOPLE - CROSS - MOORE

2 there?

3 A. That's right.

4 Q Now, there came a time when you returned to
5 the precinct, am I correct?

6 A Yes.

7 Q By the way, you testified on direct that
8 you knew that Kharey Wise was going to be videotaped
9 that day; am I correct?

10 MS. LEDERER: Your Honor, object to
11 the form of that question.

12 THE COURT: Yes, objection sustained
13 as to form.

14 Q Do you know whether Kharey Wise was going
15 to be videotaped that day?

16 MS. LEDERER: Objection.

17 THE COURT: I'll let her answer.

18 A I knew it would be a combination of Miss
19 Lederer's decision to attempt to take a video
20 statement and the defendant's consent at the time
21 she was prepared to do that.

22 Q Well, you knew that if the defendant
23 consented, Miss Lederer would, in fact, video tape
24 him that day, didn't you?

25 A I assumed that would be the plan.

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3107

1 FAIRSTEIN - PEOPLE - CROSS - MOORE

2 Q And wouldn't it be true to say, Miss
3 Fairstein, that you took Kharey Wise to that park to
4 get him acquainted with the topography of the park
5 before he made the video statement?

6 MS. LEDERER: Objection.

7 THE COURT: I'll let her answer.

8 A No, I did not.

9 Q Was that your reason for taking him there?

10 A No, it was not.

11 Q What was really your reason for taking
12 Kharey Wise to the park?

13 A My reason was to attempt to have
14 individuals involved inform us about the location at
15 which events had occurred.

16 Q The location of which events had occurred.
17 I had asked you a little earlier, and maybe you
18 responded, and maybe I just didn't recall. Did you
19 see Kharey Wise's statement before you took him to
20 the park that morning?

21 MS. LEDERER: Objection.

22 THE COURT: I'll let her answer the
23 question whether she was aware of any
24 statement being made.

25 THE WITNESS: I didn't see any written

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1 FAIRSTEIN - PEOPLE - CROSS - MOORE

2 statement. I was aware he had made a
3 statement.

4 Q So, without seeing the written statement,
5 you were about to ask him about certain things that
6 he had said in the statement; is that correct?

7 A In particular I was interested because he
8 had placed himself at the scene of the sexual
9 assault and was in a position to tell me where that
10 had occurred.

11 Q Well, when you got to the park, did you
12 ever ask him, show me where you were when this
13 altercation took place?

14 A Detective Sheehan did, yes.

15 Q And his response was so significant that
16 you didn't even make a mention of it in your notes?

17 MS. LEDERER: Objection.

18 THE COURT: Sustained.

19 Q Well, you stated, did you not, when he made
20 a statement about the tree, you didn't put that down
21 in your notes, did you?

22 A He couldn't show us where it was. That is
23 what was so significant. He couldn't show us
24 anything about where he was except to remark upon
25 the actual location of the rape and where the

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T2-fr

3109

1 FAIRSTEIN - PEOPLE - CROSS - MOORE
2 jogger's body had been when she was attacked, and
3 where she had lost her blood.

4 Q Were there trees in that area where Kharey
5 Wise was that morning?

6 A There were trees all around the area.

7 Q So you are saying that he could not point
8 out a specific tree?

9 A Not even a direction.

10 Q Well, did he not point out to you that he
11 was coming from a particular ballfield, am I
12 correct?

13 A At the first stop on the pavement, yes.

14 Q And did he point out to you where the woman
15 had apparently been dragged to a particular area?

16 A Yes.

17 Q And also he had indicated to you where some
18 comment about blood on the leaves; am I correct?

19 A Yes.

20 Q So would that indicate to you he had some
21 familiarity with the area?

22 MS. LEDERER: Objection.

23 THE COURT: Sustained.

24 Q In fact, Miss Fairstein, you were not
25 interested in locations, you wanted him to impress

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T2-fr

3110

1 FAIRSTEIN - PEOPLE - CROSS - MOORE
2 in his mind exactly what the scene was like when he
3 gave the video; is that correct?

4 A That is not correct.

5 MS. LEDERER: Objection.

6 THE COURT: She has already answered
7 the question.

8 Q You claim that also on the way back that
9 you drove past the area where there was scaffolding;
10 am I correct?

11 A Yes.

12 Q And are you sure it was Kharey Wise who
13 pointed out to you where the lightbulbs were
14 apparently broken?

15 A Yes, I am.

16 Q Are you sure of that?

17 Miss Lederer, is there any indication in
18 Kharey Wise's statement --

19 A I appreciate the compliment, but she's Miss
20 Lederer. I'm Miss Fairstein.

21 Q I'm sorry, withdraw that.

22 Did you know for a fact whether there was
23 any indication in Kharey Wise's statement that he
24 saw Antron McCray or anyone breaking the lightbulbs?
25

MS. LEDERER: Objection.

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T2-fr

3111

1 FAIRSTEIN - PEOPLE - CROSS - MOORE

2 THE COURT: Objection sustained.

3 Is this a good point for us to recess?

4 MR. MOORE: This is fine.

5 THE COURT: Recess for lunch. 2:15.

6 (Whereupon at 1:00 p.m. the luncheon
7 recess commenced.)

8 * * *

9 A F T E R N O O N S E S S I O N

10 COURT CLERK: Hearings continued.

11 People of the State of New York versus
12 Kharey Wise, Yusaf Salaam, Antron McCray,
13 Kevin Richardson, Steve Lopez, Michael
14 Brisco, Raymond Santana. Indictment 4762
15 of '89.

16 (Whereupon the witness, Linda
17 Fairstein, resumed the witness stand.)

18 THE COURT: Miss Fairstein, our PA
19 system is functioning about as usual. It's
20 not working. We will have to ask you to
21 keep your voice up.

22 THE WITNESS: Yes, sir.

23 CROSS EXAMINATION (Continuing)

24 BY MR. MOORE:

25 Q Good afternoon, Miss Fairstein.

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3112

1 FAIRSTEIN - PEOPLE - CROSS - MOORE

2 A Good afternoon.

3 Q This morning you testified that after your
4 visit to Central Park on the 21st, there came a time
5 when you passed by a scaffolding on Central Park
6 West, am I correct?

7 A Yes.

8 Q And then I think it was Detective Sheehan
9 or yourself asked Kharey Wise a question; is that
10 correct?

11 A Yes.

12 Q Was it yourself or Detective Sheehan?

13 A I believe it was Sheehan.

14 Q And do you recall what he asked?

15 A He said could he indicate the building
16 where Antron had piped the bulbs.

17 Q "Piped the bulbs"?

18 A Hit the bulbs with a pipe.

19 Q Now, prior to this, did Detective Sheehan
20 indicate to you that Kharey Wise had stated that he
21 saw Antron McCray breaking some bulbs?

22 A Yes.

23 Q Now, I'd like to show you what's been
24 marked in evidence, People's 22 and People's 23.

25 MS. LEDERER: Objection.

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T2-fr

3113

1 FAIRSTEIN - PEOPLE - CROSS - MOORE

2 MR. MOORE: It's in evidence.

3 MS. LEDERER: I object to showing
4 People's 22 and 23 to the witness.

5 THE COURT: What is the relevance of
6 this to her testimony?

7 MR. MOORE: I would like to find out,
8 your Honor, the basis for the asking of
9 that question since it is not in the
10 statement.

11 THE COURT: Objection sustained.

12 Q Did Detective Sheehan indicate to you that
13 Kharey Wise had said he saw Antron McCray breaking
14 bulbs?

15 A Yes.

16 Q Did he indicate to you whether Kharey Wise
17 had made that statement during his interrogation by
18 Detective Hartigan?

19 MS. LEDERER: Objection.

20 THE COURT: I'll allow the answer.

21 A No, he gave me no indication, nor did I ask
22 him from what period or conversation or source. He
23 just said that that's what he believed Kharey Wise
24 said.

25 Q And you never asked him what the basis of

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FAIRSTEIN - PEOPLE - CROSS - MOORE

his asking was?

A No.

Q Now there came a time when you saw Kharey Wise again at 10:30 p.m., am I correct?

A Yes.

Q Now, in the interval between when you returned to the precinct and when you saw Kharey Wise at 10:30 p.m., did you ever see him at that precinct anytime during that interval?

MS. LEDERER: Objection.

THE COURT: Sustained.

Q Did you remain at the 24th Precinct for the rest of the afternoon?

MS. LEDERER: Objection.

THE COURT: Sustained.

Q Now, you had indicated you were at a desk about eight feet away from the holding cell; am I correct?

A Yes.

Q Could you indicate exactly where you were, Miss Fairstein?

A Get down and go to the map?

Q Yes.

A (Witness complies)

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FAIRSTEIN - PEOPLE - CROSS - MOORE

The cell is here as it is marked. There are two desks back here. They have phones on them. There was a phone book in the drawer of this desk that a police officer had given me to work with and I was standing between the desk and the cell nearest to the desk.

Q You were standing with your back toward the cell; is that correct?

A My side.

Q Your side toward the cell. Now, was there a door at the entrance to the cell, do you recall?

A No door that I'm aware of.

Q Thank you.

(Witness resumes the stand.)

Q Now, prior to hearing those voices in the cell, would it be true to say that you were working on some project at the desk?

MS. LEDERER: Objection.

A No.

Q Would it be true to say that you were involved in some activity at the desk?

MS. LEDERER: Objection.

THE COURT: Weren't you looking through a telephone book?

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FAIRSTEIN - PEOPLE - CROSS - MOORE

THE WITNESS: I was not at the desk.
I was in a different area of that room --
actually out of that room until I went
specifically there to pick up a phone book
and look for a number.

Q Now, there came a time when you heard some
voices coming from the cellblock, am I correct?

A Two times actually.

Q There were two times you heard some voices.
Now, with regard to the first time you heard the
voices, what did you do after you heard the voice --
let me just withdraw that.

Did there come a time when you heard some
voices?

A Yes.

Q And what exactly did you hear?

A I heard Kharey Wise say, "Did you tell them
about the guy that said do you want to race"?

Q Right. Now you heard -- by the way, did
you see Kharey Wise speaking at the time when you
heard this?

A I had spoken -- he's one of the few in the
group to whom I had spoken personally that day, and
I looked up when I heard his voice as he was

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FAIRSTEIN - PEOPLE - CROSS - MOORE

speaking, so I could see he was the person talking.
Yes.

Q So, are you saying then, Miss FAirstein,
that from the position you were, which would be
eight feet from the entrance of the cell block, is
it your testimony that you could see the individual
who was uttering these words?

A That's correct.

Q From the position where you were by the
desk?

A Yes, sir.

Q And you saw that person without even coming
to the entrance of the cell block, am I correct?

A Oh, yes, you can see easily into the cell
and from the cell back, as it was proved by the
second series of voices.

Q Now, you also testified this morning that
you heard a response; is that correct?

A Yes.

Q And what was the response that you heard?

A The response was, yeah, I told them that
too.

Q And did you see the person who was saying
that?

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P-APP001202

T2-fr

3118

1 FAIRSTEIN - PEOPLE - CROSS - MOORE

2 A No.

3 Q So, from the position where you were you
4 could not see the person who was making a response;
5 is that correct?

6 A I could see a group from which the response
7 came. Mr. Wise was standing alone nearest to me.
8 There were four or five of the others seated and
9 laying on the far side of the cell. I could not
10 pick out the person who made that response.

11 Q Now, you stated that there came a time that
12 you heard a second statement coming from the cell
13 block.

14 A There was a second incident with noise from
15 the cell, yes.

16 Q What was that second statement that you
17 heard?

18 A It's not a statement. It was a series of
19 noises and statements. Shortly after I returned
20 with the phone book to another room which is the
21 room on that map, directly to the right of that
22 locker room area --

23 Q Could you just indicate on the exhibit?

24 A Yes. (Witness complies)

25 I was in this room, which is, I believe,

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P-APP001203

T2-fr

3119

1 FAIRSTEIN - PEOPLE - CROSS - MOORE

2 the Captain's office in that precinct, and I heard
3 from without a real commotion.

4 Q When you say "commotion" what did you hear?

5 A Whistling, screaming, ruckus laughter as
6 though a party was going on.

7 Q And what happened after that?

8 A I walked out, concerned, to see what the
9 source of the commotion was.

10 Q Did you hear Kharey Wise making any remarks
11 at this time?

12 A I heard at least five or six screaming
13 voices and I could not identify anyone to match to
14 the words that I heard.

15 Q So you could not distinctly recall Kharey
16 Wise saying anything at that time?

17 A I cannot identify who said what.

18 Q Now, apart from the fact you heard Kharey
19 Wise stating, "Did you tell them about the guy who
20 said 'Do you want to race?'" so that is the only
21 statement you could attribute to Kharey Wise;
22 correct?

23 A Some one answered and said, "I told them
24 that too," and then Kharey Wise said, "Yeah, that
25 was funny."

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P-APP001204

T2-fr

3120

1 FAIRSTEIN - PEOPLE - CROSS - MOORE

2 Q Apart from those two statements, you didn't
3 know what Kharey Wise was referring to, did you?

4 A At that time I did not.

5 Q He could have been speaking about some race
6 that he had observed a year ago; as far as you were
7 concerned?

8 MS. LEDERER: Objection.

9 A She didn't know, so I suppose that's
10 possible.

11 Q Now, Miss Lederer, going back to your first
12 meeting with Kharey Wise --

13 A I am Miss Fairstein.

14 Q I'm sorry.

15 Going back, Miss Fairstein, to your first
16 meeting with Kharey Wise, you stated that you
17 introduced yourself as the Assistant District
18 Attorney and then you proceeded to read him certain
19 rights.

20 A Introduced myself. Told him what my
21 intention was that morning, if he agreed, and then
22 read him his rights.

23 Q What did you tell him your intention was
24 that morning?

25 A That I intended, if he consented, to go

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P-APP001205

T2-fr

3121

1 FAIRSTEIN - PEOPLE - CROSS - MOORE

2 back to Central Park. To go to Central Park, take
3 him back to Central Park and that I would first read
4 him his rights and told him that I would ask him
5 questions after I read him his rights.

6 Q Well, you told him in effect you would like
7 to take him to Central Park, and then proceeded to
8 read the rights?

9 A I told him I was going to ask him if he
10 would be willing to go with us after I read him his
11 rights.

12 Q Did you ask him if he was willing to go?

13 A Yes, I did.

14 Q Did you tell him he was free to go if he
15 did not wish to go?

16 A Yes, absolutely did. I told him that he
17 did not have to go to the park, that it was his
18 choice.

19 Q But I don't recall you telling him that on
20 direct.

21 MS. LEDERER: Objection.

22 THE COURT: Sustained.

23 Q You stated you introduced yourself and you
24 began to read him his rights --

25 MS. LEDERER: Objection. That is not

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NYCLD_015261

P-APP001206

T2-fr

3122

1 FAIRSTEIN - PEOPLE - CROSS - MOORE

2 even a question, it's a statement.

3 THE COURT: Ask a question.

4 Q Did you not state that you proceeded to
5 introduce yourself and then proceeded to read him
6 his rights, did you not state that on direct?

7 A I believe on direct I stated I introduced
8 myself and told him I would want him to go to
9 Central Park and then read him his rights. I told
10 him after the reading of the rights I would ask him
11 if he would be willing to accompany us to the park.

12 Q You told us a few minutes ago you informed
13 him of his rights?

14 A And then I would inform him of his rights.
15 I told him the reason I was reading him his rights
16 was to ask him if he was willing to go to the park.

17 Q So you asked him twice, once if he would be
18 willing to go to the park, and then you read him his
19 rights and then you asked him if he would be willing
20 to go to the park?

21 MS. LEDERER: Objection.

22 THE COURT: Sustained.

23 That's not what she said.

24 Q Did you tell him you wanted him to go to
25 the park before reading him his rights?

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P-APP001207

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FAIRSTEIN - PEOPLE - CROSS - MOORE

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A I told him it was my intention to go to the park that morning, and if he would like to accompany us. That first I would have to tell him his rights and then perhaps begin with would he like to go to the park.

Q So you stated you would like to take him to the park, but you did not ask him a question or --

MS. LEDERER: Objection.

THE COURT: Sustained.

Q Did you ask him, before you read him his rights, whether he was willing to go to Central Park with you?

A No, I told him I was going to ask him that. That was the purpose for talking to him, that I was not there to interrogate him. I was going to ask him if he would accompany me for that specific purpose, but first I needed to advise him of his rights.

Q Now, I'd like you to look at your notes, Miss Fairstein. With regard to your questions and answers re. Kharey Wise --

A Yes.

Q -- it states there, does it not, that you read him his rights at about 7 a.m.?

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P-APP001208

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FAIRSTEIN - PEOPLE - CROSS - MOORE

MS. LEDERER: Objection.

THE COURT: Objection sustained.

It's not in evidence.

MR. MOORE: Well, your Honor, I'd like to have this marked as Wise Exhibit -- I think it's F.

MS. LEDERER: May we approach for a moment?

THE COURT: Yes.

(Discussion at sidebar, off the record)

Q I'd like you to look at the statement -- your notes rather.

Is there anywhere in the statement -- you indicate any where in the statement that you asked Kharey Wise whether he was willing to go with you to Central Park?

A As you know, it's not a statement --

Q These are your notes, are they not?

A Yes. It's not a statement.

Q You indicate anywhere in your notes that you asked him this question and that he gave you a response?

A No.

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P-APP001209

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FAIRSTEIN - PEOPLE - CROSS - MOORE

Q Thank you.

MR. MOORE: I'd like to have that marked Wise Exhibit F.

THE COURT: It's clearly not in there. You want to put it in evidence, put it in evidence. She says it's not in her notes.

Q Now, you had mentioned in your notes that you had read him his rights; is that correct?

Do you mention in your notes you read him his rights?

A That's right.

Q You also mention in your notes, do you not, that you read him his rights from your card from your wallet; is that correct?

A Correct.

Q You also mentioned that he was not cuffed?

A Correct.

Q But nowhere in your notes do you mention the fact that you asked him if he wanted to go with you to Central Park and he gave his consent; correct?

A Correct.

Q Now, when you were asked this morning, by Miss Lederer, you indicated that Kharey Wise did not

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T2-fr

3126

1 FAIRSTEIN - PEOPLE - CROSS - MOORE
2 indicate to you that he wanted to make a telephone
3 call, am I correct?

4 A He never talked about making a telephone
5 call to me, no. Never asked to.

6 Q Did you tell him that he had a right to
7 make a telephone call if he so wished? Did you tell
8 him that?

9 A I did not tell him that, no.

10 Q Now, you stated that these notes were
11 prepared by you the following Monday, after this
12 incident; am I correct?

13 A These particular notes, yes.

14 Q Now, before putting the notes in writing,
15 before reducing them to writing, did you speak to
16 Detective Sheehan?

17 A No, I did not.

18 Q So you merely based the notes on your
19 recollection am I correct?

20 A Not merely, but I based them on my
21 recollection.

22 Q And you also stated that basically it was
23 Detective Sheehan who had asked most of the
24 questions at the crime scene?

25 A Yes.

11/13/89

NYCLD_015266

P-APP001211

T2-fr

3127

1 FAIRSTEIN - PEOPLE - CROSS - MOORE

2 Q And yet you prepared your notes without
3 consulting with Detective Sheehan, right?

4 A Yes. I wanted them to be from my
5 recollection.

6 Q No, just a yes or no. Just yes or no.

7 And you stated, you said there you were not
8 aware on the 21st at 7 a.m. that Kharey Wise had
9 made two different statements?

10 MS. LEDERER: Objection.

11 THE COURT: she's already answered
12 those questions.

13 Q You have stated that already, did you not?

14 THE COURT: Yes, she did.

15 MS. LEDERER: Objection.

16 Q By the way, before you spoke to Kharey Wise
17 that morning, did you ever speak to Detective
18 Hartigan?

19 MS. LEDERER: Objection.

20 THE COURT: I'll let her answer.

21 A Did I at any course of the time --

22 Q No, before you spoke with him at 7:00 that
23 morning, did you speak to Detective Hartigan?

24 A During what period of time? I don't
25 understand.

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P-APP001212

T2-fr

3128

1 FAIRSTEIN - PEOPLE - CROSS - MOORE

2 Q Prior to taking him to the crime scene,
3 prior to taking Kharey Wise to the crime scene, did
4 you have a conversation with Detective Hartigan
5 about Kharey Wise's statement?

6 A No.

7 Q During the period of time when you were at
8 the crime scene or at any time after, did you have a
9 conversation with Detective Hartigan?

10 MS. LEDERER: Objection.

11 THE COURT: As to after I will sustain
12 the objection.

13 Q During the time when you were at the crime
14 scene, did you have a conversation with Detective
15 Hartigan?

16 A No.

17 MR. MOORE: No further questions.

18 THE COURT: Mr. Diller?

19 MR. MOORE: Can I just have one
20 second, your Honor?

21 THE COURT: Yes.

22 BY MR. MOORE:

23 Q Miss Fairstein, as you sit there now, can
24 you be sure that the two people you took to the park
25 that morning was Kharey Wise and Kevin Richardson?

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P-APP001213

T2-fr

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FAIRSTEIN - PEOPLE - CROSS - MOORE

A I am quite certain.

Q And are you sure that it was not in fact Raymond Santana who went to the park with Kharey Wise?

A No. I only spoke to Raymond Santana only once. I can tell you what my exact contact was with these two men.

Q And with respect to the individual who told you about the lightbulbs, are you sure that it was Kharey Wise who told you about those lightbulbs that Antron had broken and not Raymond Santana?

A It was Detective Sheehan who told me that Kharey Wise had said that. It was Kharey in the car who pointed out the location to me.

MR. MOORE: No further questions of this witness.

THE COURT: Mr. Diller.

CROSS EXAMINATION

BY MR. DILLER:

Q Good afternoon, Miss Fairstein.

As you know, I'm Howard Diller, and I represent Kevin Richardson and other than some preliminary questions, everything I'll be talking about with you will pertain, obviously, to Kevin.

11/13/89

NYCLD_015269

P-APP001214

T2-fr

3130

1 FAIRSTEIN - PEOPLE - CROSS - DILLER

2 Now, you've been in the District Attorney's
3 office some 17 years, have you not?

4 A Yes, I have.

5 Q And what exactly is your present title in
6 the office?

7 I just did not get it when you testified
8 under direct examination this morning.

9 A I'm in charge of a bureau called the Sex
10 Crimes Commission Unit which investigates and
11 prosecutes all sex offenses which occur in
12 Manhattan. I have another title now, Deputy Chief
13 of the Trial Division which is a supervisory
14 position of 250 attorneys.

15 Q And it would be fair to say that keeps you
16 pretty busy?

17 A Most days it does, sir.

18 Q And you have, in addition to the
19 supervision of all these attorneys, an interest in
20 certain of the cases that your office is
21 prosecuting, is that correct, a special interest
22 like this case?

23 MS. LEDERER: Objection.

24 THE COURT: Do you have a special
25 interest in certain cases?

11/13/89

NYCLD_015270

P-APP001215

T2-fr

3131

1 FAIRSTEIN - PEOPLE - CROSS - DILLER

2 THE WITNESS: Usually a case with
3 which I'm on trial. Especially interesting
4 to me.

5 Q Now, Miss Fairstein, some seven months has
6 passed now since approximately, since the 21st of
7 April, '89. Would it be fair to say that you have
8 been involved in one way or another with many, many
9 cases?

10 A Yes.

11 Q And would it also be fair to say that prior
12 to coming to court today you did not have the
13 benefit of speaking to Detective Hartigan and
14 Sheehan within the last month?

15 A About this case?

16 Q Yes, about this case.

17 A That's correct, yes.

18 Q And would it also be fair to say that
19 you're aware that there's a transcript made each day
20 of the testimony of the witnesses here?

21 A Yes.

22 Q And would it also be fair to say that you
23 had not read the transcript of the testimony of
24 Detective Sheehan and Hartigan?

25 A That is correct.

11/13/89

T2-fr

3132

1 FAIRSTEIN - PEOPLE - CROSS - DILLER

2 Q And furthermore, it would be fair to say
3 that you had no colloquy with Miss Lederer
4 concerning the testimony of Sheehan and Hartigan?

5 A That's right.

6 Q And would it be fair for me to say then
7 that what you are testifying about today is in
8 response to questions posed to you by Miss Lederer
9 that you recall to the best of your ability?

10 A Yes.

11 Q And you had some help with some of the
12 notes you have made the Monday following the 21st;
13 is that correct?

14 A Some, as you are aware, I made during the
15 many hours we were at the stationhouse and some that
16 I made on the 20th.

17 Q Now, I'm going to now bring you to the 24th
18 Precinct, on the morning of the 21st, about which
19 you had testified to this today.

20 And you have testified there came a time
21 that a decision was made with respect to going to
22 the park, which could be also called the crime
23 scene, am I right?

24 A Right.

25 Q Now, who were the folks with whom you had

11/13/89

NYCLD_015272

P-APP001217

T2-fr

3133

1 FAIRSTEIN - PEOPLE - CROSS - DILLER
2 colloquy concerning that decision? I know Detective
3 Sheehan was one.

4 Q Detective Jonza was another.

5 Q Now, is Detective Jonza a partner of sort
6 of Detective Sheehan, do you know?

7 A I know that they work in the same unit and
8 they're partnership switches from case or tour, but
9 they have been partners from time to time.

10 Q And who else was in on that decision, if
11 you could tell us?

12 A I am sure that I told at least one police
13 supervisor what our plan was, and I spoke briefly
14 with Miss Lederer about it.

15 Q Now, would I be correct in assuming that
16 going to the crime scene is a good prosecutorial and
17 police technique?

18 MS. LEDERER: Objection.

19 THE COURT: I'll allow her to answer.

20 A It may be. It depends on the
21 circumstances.

22 Q I mean with specificity, this case. The
23 question is -- withdrawn.

24 In other words, what I'm asking you, it was
25 a good police technique from your vantage point on

11/13/89

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P-APP001218

T2-fr

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FAIRSTEIN - PEOPLE - CROSS - DILLER

the 21st of April at 8:00 to go to the crime scene?

A I don't think I would have gone if I didn't think it was a good thing to do.

Q And when you decided to go to the crime scene, would it be fair to say that you were going to go with two of the suspects, namely Kharey Wise and Kevin Richardson?

A If they were willing to accompany us.

Q Now, you had a certain object in asking them to come, had you not?

A Yes.

Q And would it be fair to say that that object was to discuss with them concerning certain matters pertaining to the park and to the female jogger victim?

A In part that is correct.

Q And to discuss with them certain specific locations, for example, where the event had taken place?

A That is part of my purpose.

Q What are some of the other purposes that you had? You said this is part of it. What are some of the other purposes that you had?

A As you may know, I was responsible for the

11/13/89

NYCLD_015274

P-APP001219

T2-fr

3135

1 FAIRSTEIN - PEOPLE - CROSS - DILLER

2 prosecution of a murder case, Robert Chambers case
3 which occurred in Central Park. That was a case in
4 which we were plagued at trial by unfortunate
5 occurrences and omissions in the investigatory work
6 that was not done at the crime scene, and in
7 particular there were two crime scenes within the
8 park in the case which I was involved with, a
9 primary and secondary crime scene. One of which had
10 been ignored completely and it was part of my
11 intention, when we were beginning to discover how
12 enormous this crime scene in this case was, that it
13 started in a roadway and it ended with a body at a
14 great distance away with evidence in between to try
15 and resolve the relation of the different locations
16 in the park, at an early period in time.

17 Q And in resolving these matters, it would be
18 a wonderful technique to have people who were
19 suspects and question them about where and how
20 things had taken place in the park on the 19th,
21 isn't that so?

22 A Well, much of the questions had been done
23 already. Whether or not any suspects accompanied me
24 I intended to go in any event. Your client had
25 already been questioned and discussed where things

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FAIRSTEIN - PEOPLE - CROSS - DILLER
had happened.

Q You said he had already given a video tape?

A That's correct.

Q But nevertheless it was your purpose to question him further or at least the detectives questioning him further with some of the specifics relating to the park itself? Isn't that so?

A We were not planning to interrogate him or question him further at the scene other than to ask the most simple questions, perhaps less than five, to relate the facts that he had already been questioned to a specific location within the several locations at the park.

Q After 17 years of experience, would you acknowledge to us that maybe one question could be a really important question, a number not being important?

MS. LEDERER: Objection.

THE COURT: I'll allow it.

A I don't understand your question.

Q In other words, the fact he was going to ask five questions, couldn't that have been important to you?

MS. LEDERER: Objection.

11/13/89

NYCLD_015276

P-APP001221

T2-fr

3137

1 FAIRSTEIN - PEOPLE - CROSS - DILLER

2 THE COURT: I guess if she asked the,
3 she would assume they would be important.

4 What is your question?

5 Q Question withdrawn.

6 You certainly had planned that Kevin wasn't
7 going to be simply taken in a car ride through
8 Central Park; is that correct?

9 A That's right.

10 Q And you certainly planned there came a
11 point and a place when you were going to ask -- at
12 least Detective Sheehan, if not you, some question
13 to Kevin; isn't that so?

14 A Yes.

15 Q With that in mind, before you now leave the
16 24th Precinct, you have at the stationhouse the
17 presence of Mr. Richardson, Kevin's father; is that
18 right?

19 A Yes.

20 Q To whom you had previously been introduced
21 by Detective Sheehan, I believe?

22 A Yes.

23 Q By the way, was there another member of the
24 family there too?

25 A I believe there were two women there. I

11/13/89

NYCLD_015277

P-APP001222

T2-fr

3138

1 FAIRSTEIN - PEOPLE - CROSS - DILLER

2 later -- Many, many hours later I believe Friday
3 night, one introduced herself to me as the sister of
4 Kevin.

5 Q Angela?

6 A She had a different last name. I believe
7 it was Cuffy.

8 Q Cuffy. Now, there comes the point where
9 you having been introduced to Kevin's father, Paul
10 Richardson; is that the name?

11 A Mr. Richardson. I don't know a first name.

12 Q And you discussed with him that you would
13 like Kevin's permission to go with him to the park;
14 is that so?

15 A Yes.

16 Q And did you discuss with Mr. Richardson
17 what your object of taking Kevin into the park was?

18 A Yes.

19 Q What did you tell him?

20 A That we were going back to the location,
21 that -- of course he had been present for Kevin's
22 statement. He knew what Kevin had said and we were
23 going to try and ask Kevin to put together what he
24 had said about the crime with where it had happened,
25 a specific location.

11/13/89

NYCLD_015278

P-APP001223

T2-fr

3139

1 FAIRSTEIN - PEOPLE - CROSS - DILLER

2 Q And am I correct or did I mishear you this
3 morning where you testified, and correct me if I'm
4 wrong, wherein your colloquy with Mr. Richardson you
5 said to him something to the effect, "We would not
6 be asking any more questions," you recall so
7 testifying this morning?

8 A Yes. Any additional questions, questions
9 other than he had been asked, he, Kevin had been
10 asked.

11 Q Now, did you have in mind then that the
12 questions that were going to be asked of Kevin were
13 questions that had been asked previously by other
14 detectives and at the video, is that what you meant?

15 A Yes.

16 Q In other words, there were no brand new
17 questions that had never been asked is what you told
18 Richardson?

19 A Yes.

20 Q And you knew Kevin was fourteen, did you
21 not?

22 A I knew he was not sixteen, yes. Fourteen
23 or fifteen, I don't remember now, but I knew he was
24 not sixteen.

25 Q And you knew it was some pretty important

11/13/89

T2-fr

3140

1 FAIRSTEIN - PEOPLE - CROSS - DILLER
2 stuff you were going to do with him, isn't that so?

3 A Yes.

4 Q Did it occur to you, with the background
5 you talked about with Chambers, that it would be a
6 good idea if Mr. Richardson went along for the ride,
7 if nothing more the potted plant --

8 MS. LEDERER: Objection.

9 THE COURT: Who is Mr. Richardson?

10 MR. DILLER: Paul.

11 A Yes.

12 Q It occurred to you?

13 A Yes.

14 Q Did you tell Mr. Richardson it would be a
15 good idea for him to go along?

16 A I asked him if he wanted to go along with
17 him.

18 MR. BURNS: I'm sorry, did she answer
19 yes?

20 THE COURT: She answered more than
21 that.

22 Q He said what?

23 A I asked him if he wanted to go with us and
24 that he had the right to go with us.

25 Q All right, that's very important.

11/13/89

NYCLD_015280

P-APP001225

T2-fr

3141

1 FAIRSTEIN - PEOPLE - CROSS - DILLER

2 Now you say that Paul Richardson, let's
3 keep his name Paul, if you don't mind, because that
4 will reflect Kevin's father. If he would like to
5 come along and he would be welcome to join you; is
6 that correct?

7 A Yes.

8 Q Now, when you so asked him that, where was
9 Detective Sheehan and Jonza?

10 A I believe they were several feet away from
11 me, talking to Kevin, if I'm not mistaken.

12 Q And are you telling me now that Sheehan,
13 Detective Sheehan wasn't right next to you when you
14 asked that question -- wasn't he part of the
15 questioning with respect to Kevin's father coming to
16 the park?

17 A He introduced me to Kevin's father. Did he
18 stay there the entire two or three minutes that I
19 talked to his father? He was never more than a
20 couple of feet away but I can't say what part he
21 listened to, and what part he didn't listen to.

22 Q Did you hear any colloquy between Detective
23 Sheehan and Mr. Richardson concerning his
24 willingness to take him to the park?

25 A No.

11/13/89

NYCLD_015281

P-APP001226

T2-fr

3142

1 FAIRSTEIN - PEOPLE - CROSS - DILLER

2 Q Did you suggest to Mr. Richardson anything
3 further with respect to the importance of his being
4 present in the park?

5 A No.

6 Q And did you ask him at that point if he
7 would like to accompany you?

8 A Yes.

9 Q And what was his response?

10 A No. "Would we bring Kevin back to this
11 building?" I said, "Yes," and he said, he and his
12 family would wait there.

13 Q This response, do I understand, was after
14 you had said to him, "We will not be asking him any
15 more questions?"

16 A Yes.

17 Q And then right after that he said he'll
18 just wait here for Kevin to come back?

19 A Yes.

20 Q By the way, you had some room in your car,
21 did you not, to take Paul Richardson?

22 A Whether there was room in that car or
23 another car would have been dispatched with us, he
24 could have come.

25 Q By the way, I'm a little confused with

11/13/89

NYCLD_015282

P-APP001227

T2-fr

3143

1 FAIRSTEIN - PEOPLE - CROSS - DILLER

2 respect to that issue of "car". Now, the New York
3 City Police Department has detective cars, is that
4 right, squad cars?

5 A They have marked cars, unmarked cars.

6 Q You were talking about an unmarked car?

7 A Right.

8 Q Operated by Detective Sheehan; is that
9 correct?

10 A Yes.

11 Q And that car was outside the 24 Precinct,
12 wasn't it?

13 A Yes.

14 Q And who went into that car operated by
15 Detective Sheehan other than Detective Sheehan?

16 A I did. I sat in the front seat with
17 Sheehan. Jonza sat in the middle of the back seat.
18 Kharey Wise was directly behind me and Kevin
19 Richardson was behind Detective Sheehan.

20 Q And you're quite positive about that?

21 A Yes, I was quite positive because I was
22 concerned because nobody was handcuffed.

23 Q Do you know if there was a second detective
24 car that was following you?

25 A On the first trip?

11/13/89

NYCLD_015283

P-APP001228

T2-fr

3144

1 FAIRSTEIN - PEOPLE - CROSS - DILLER

2 Q Yes.

3 A To my knowledge there was not.

4 Q And you didn't see Detective Hartigan and
5 Nugent, did you?

6 A On the first trip to the park I did not.

7 Q And you're quite positive that both Wise
8 and Richardson were in your car with Jonza and
9 Sheehan?

10 A On the first trip there is no doubt of it.

11 Q Now, when you get to the park, you see no
12 other members of your department, the District
13 Attorney's office or the Police Department other
14 than uniformed personnel; is that correct?

15 A On the first trip back, that's correct.

16 Q Now there comes a time when Sheehan
17 identifies himself to the uniformed personnel and
18 you're out of the car; is that right?

19 A When we pulled up I was in the car and that
20 driver going in the other direction and Sheehan were
21 window to window. Sheehan identified himself and we
22 then pulled over and we stepped out.

23 Q Now, there came a time when one of the
24 suspects was asked to alight from the car; is that
25 right?

11/13/89

NYCLD_015284

P-APP001229

T2-fr

3145

1 FAIRSTEIN - PEOPLE - CROSS - DILLER

2 A Yes.

3 Q And who was that?

4 A My recollection is it was Kevin first.

5 Q Are you certain about that, or is it a
6 little foggy in your mind?

7 A It's not foggy.

8 Q You're sure?

9 A I'm pretty certain. I know at the second
10 site, at the ravine it was definitely Kevin first,
11 but I'm quite sure that was the same order we
12 followed at the top.

13 Q Now, when he came out of the car, did you
14 say anything to him?

15 A No.

16 Q Did Sheehan say anything to him?

17 A Yes.

18 Q And you say Sheehan asked him whether this
19 looked familiar, the site?

20 A Yes.

21 Q And do I recall you testified this morning
22 something to the effect, "This is where we took her
23 down"?

24 A Yes.

25 Q And you attributed that statement to Kevin

11/13/89

NYCLD_015285

P-APP001230

T2-fr

3146

1 FAIRSTEIN - PEOPLE - CROSS - DILLER
2 Richardson?
3 A Yes.
4 Q Are you positive about that?
5 A Yes.
6 Q Who was present when that statement was
7 supposedly uttered by Kevin Richardson?
8 A Sheehan and myself.
9 Q Jonza and Wise were in the other car?
10 A Were at the car, I believe still inside.
11 Q And you and Sheehan were in close proximity
12 to each other at that point, were you not?
13 A Yes.
14 Q And Kevin did not whisper that into your
15 ear alone, did he?
16 A No.
17 Q And then there were other questions asked
18 of Kevin, were there?
19 A There at that location?
20 Q At any place in the park.
21 Q None further there.
22 Q And then you drove to a ravine and at the
23 ravine all five of you were in the car at one point,
24 is that right, and Sheehan leaves the car; correct?
25 A Sheehan and I left the car when we got to

11/13/89

NYCLD_015286

P-APP001231

T2-fr

3147

1 FAIRSTEIN - PEOPLE - CROSS - DILLER
2 the bottom of the ravine.

3 Q And then you called someone out of the car?

4 A When we first got out of the car, Sheehan
5 and I had a conversation with the uniformed cop who
6 pointed some things out at the bottom of the ravine,
7 and then Sheehan and I started walking up the muddy
8 slope. We came back and we asked -- Detective
9 Sheehan asked Kevin to get out of the car and come
10 with us, and we walked up.

11 Q And this is where Kevin said, "This is
12 where it happened, the rape"?

13 A "This is where it happened" period.
14 SHEehan said, "What happened?" Kevin said,
15 "Raping."

16 Q And at that moment you were alone with
17 Detective Sheehan and Kevin, right?

18 A Yes.

19 Q And there were no further statements made?

20 A No questions asked of him after that.

21 Q Taking you back to the 24, before you left
22 to go to the park, this was now at approximately --
23 between seven and eight in the morning, is it not?

24 A Yes.

25 Q Of an event that took place a day and a

11/13/89

NYCLD_015287

P-APP001232

T2-fr

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FAIRSTEIN - PEOPLE - CROSS - DILLER

half before?

A Yes, sir.

Q The seriousness of this matter was apparent to you, was it not?

A Yes.

Q And you had the opportunity to meet with Kevin's father, Paul; is that right, you testified to that?

A Yes.

Q Did you discuss with Paul Richardson that -- this was really a serious matter, and he may want to engage some counsel to assist his 14 year old son or under 16 year old son, did you ever say anything like that to him?

A I did not.

Q Did you discuss anything with Mr. Richardson at that point?

A Nothing other than what I told you about here.

Q You say there did come a time when you returned to the park?

A Yes.

Q And who was present in your car the second time?

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NYCLD_015288

P-APP001233

T2-fr

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FAIRSTEIN - PEOPLE - CROSS - DILLER

A Second time it was Detective Sheehan, Miss Lederer, Mr. Clements, myself and Michael Manne (ph) our video unit head.

Q And there was a second detective's car at that scene?

A Yes.

Q Who was present in that car?

A I believe Detective Hartigan and Detective Nugent and Kevin Richardson.

Q And there were no other suspects there?

A Not that I'm aware of.

Q Now, did you have any colloquy with Kevin Richardson at that point?

A I didn't speak with any of the three occupants of that car at that scene, at that time.

Q Would it be fair to say that your appearing for a second time had nothing to do with Detective Hartigan and Kevin Richardson and whoever else was in that car, it was coincidence only that you were both there at the same time?

MS. LEDERER: Objection.

THE COURT: I'll allow it.

A It had nothing to do with me. I had no contact with them at that time.

11/13/89

NYCLD_015289

P-APP001234

T2-fr

3150

1 FAIRSTEIN - PEOPLE - CROSS - DILLER

2 Q And no plan for it to happen?

3 A Not that I remember.

4 MR. DILLER: May I just have a moment?

5 THE COURT: Yes.

6 Q I just want to clarify one thing, if I may,
7 Miss Fairstein, in your decision to take Kevin to
8 the park, the very first time, the morning of the
9 21st, would it be fair to say that you considered
10 that procedure an important one for you, for your
11 investigation?

12 A For the investigation, not for the purpose
13 of introducing statements at a later point in time.
14 It was for a different purpose. A statement had
15 been taken.

16 Q Now, you knew, did you not, you had with
17 you a suspect of a serious crime, and anything that
18 suspect would say to you would be something
19 ultimately could and would be used against him?

20 A Could be.

21 Q And you had foreseen that prior to leaving
22 the stationhouse; isn't that so?

23 A Certainly considered it.

24 Q As you reflect back in object fairness, do
25 you think you may have mislead Mr. Richardson when

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P-APP001235

T2-fr

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FAIRSTEIN - PEOPLE - CROSS - DILLER

you told him you would not be asking any more
questions?

MS. LEDERER: Objection.

THE COURT: Sustained.

MR. DILLER: Then I have no further
questions.

THE COURT: Any other questions?

MS. LEDERER: No.

THE COURT: Thank you.

(Witness excused)

MS. LEDERER: May we approach?

THE COURT: Yes.

(Discussion at sidebar; off the
record.)

11/13/89

NYCLD_015291

P-APP001236

1 People Rebuttal - Fairstein - Direct - Lederer 4445

2 SUPREME COURT NEW YORK COUNTY
3 TRIAL TERM PART 59

4 -----X
5 THE PEOPLE OF THE STATE OF NEW YORK :
6 -against- :
7 RAYMOND SANTANA, KHAREY WISE, : INDICTMENT NO:
8 YUSEF SALAAM, ANTRON McCRAY, : 4762-89
9 KEVIN RICHARDSON, STEVEN LOPEZ :
10 and MICHAEL BRISCO, :
11 Defendant. : Continued Hearing
12 -----X

13 111 Centre Street
14 New York, N.Y. 10013
15 November 29th, 1989
16

17 BEFORE: HON. THOMAS B. GALLIGAN,
18 JUSTICE OF THE SUPREME COURT

19 (Appearances: Same as previously noted.)
20 -----

21 COURT CLERK: Hearing is continued, People of
22 the State of New York versus Kharey Wise, Yusef
23 Salaam, Antron McCray, Kevin Richardson, Steven
24 Lopez, Michael Brisco, Raymond Santana, Indictment
25 4762 of '89.

THE COURT: Good morning.

MR. BURNS: Good morning, your Honor.

MR. JOSEPH: Good morning, Judge.

THE COURT: Who is your next witness?

MS. LEDERER: The People call Linda
Fairstein.

(The witness resumes the witness stand.)

COURT CLERK: Miss Fairstein, may I remind

Joseph T. Tierney, CSR, RPR

1 People Rebuttal - Fairstein - Direct - Lederer 4446

2 you you are still under oath.

3 THE WITNESS: Yes.

4 THE COURT: Good morning.

5 THE WITNESS: Good morning, your Honor.

6 DIRECT EXAMINATION

7 BY MS. LEDERER:

8 Q. Directing your attention to approximately 11:30
9 p.m. on the evening of April 20th of 1989, were you at the
10 20th Precinct at that time?

11 A. Yes, I was.

12 Q. Did there come a time on that night at the 20th
13 Precinct that you became aware that someone was making
14 inquiry about Yusef Salaam?

15 A. Yes, I did.

16 Q. Where were you at the time that you were made
17 aware of that?

18 A. I was on the 2nd floor of the stationhouse, in the
19 detective squad room.

20 Q. And how was it that you became aware that there
21 was someone inquiring about Yusef Salaam?

22 A. A detective, I don't remember which detective, the
23 detective came to me in the squad room and said that there
24 was someone, and I'm quite sure he said a lawyer, downstairs
25 for Yusef Salaam.

Joseph T. Tierney, CSR, RPR

1 People Rebuttal - Fairstein - Direct - Lederer 4447

2 Q. What, if anything, did you do immediately upon
3 receiving that information?

4 A. I said that I wanted to find out where in the
5 stationhouse Salaam was, meaning what detectives he was
6 with, so I could find out what the nature of his partici-
7 pation was, what he was in the stationhouse for, what he was
8 saying before I went down to meet with --

9 MR. BURNS: I'm sorry, your Honor, I'm sorry,
10 your Honor, I'm objecting because -- is she
11 talking about her state of mind or is this what
12 she told the person who told her?

13 THE COURT: Yes, just tell us -- I think the
14 question was what did you do then. You said that
15 you were trying to find out where he was, what
16 status was that?

17 THE WITNESS: Okay, I asked one of the
18 detectives -- again, I believe it was Sergeant
19 Cleeve -- I said to Sergeant Cleeve that I was
20 going downstairs to meet with the lawyer, I wanted
21 to know what Salaam had been saying, what his
22 participation was, could you get the detective who
23 is working with him here immediately to talk to
24 me.

25 Q. After you -- after you said those things to

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2 Sergeant Cleeve, what was the next thing that happened?

3 A. Within a minute or two, Detective Taglioni
4 appeared where I was in the 2nd floor squad room and he said
5 that Detective McKenna was working -- was talking to Salaam,
6 and he handed me a small brown detective steno pad -- steno
7 pad commonly used by detectives as well as other people. He
8 handed me a brown pad and said that McKenna had sent it down
9 to me, it had the beginnings of his notes about his
10 conversation with Salaam.

11 Q. Approximately what time was it, if you recall,
12 that you were first notified that there was someone
13 inquiring about Yusef Salaam?

14 A. I placed it at about 11:30 that evening.

15 Q. What did you do with the steno pad that Detective
16 Taglioni gave to you?

17 A. I looked at it, I read what was in it, had a brief
18 conversation with Taglioni and gave it back to Taglioni to
19 return to McKenna.

20 Q. And do you recall the substance of what you read
21 from that steno pad at that time?

22 A. Yes.

23 Q. Would you please tell us what -- what information
24 you read off of the steno pad?

25 A. The steno pad had Yusef Salaam's name, address --

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2 MR. BURNS: Excuse me, your Honor, she read
3 it, she read it out loud at the time?

4 THE COURT: I don't know.

5 MR. BURNS: I object to that.

6 THE COURT: Overruled.

7 MR. BURNS: All right.

8 A. It had Salaam's name, address, date of birth and
9 it had a description -- began with a description that he got
10 her with the pipe, that he hit her over the head with the
11 pipe, that she went down, that he hit her again with the
12 pipe and then started to describe a sexual assault by other
13 participants on the woman jogger.

14 Q. Do you recall how many pages were -- how many
15 pages you read from the steno pad?

16 A. At the time I read it, my recollection is of a
17 page of -- a single page of notes.

18 Q. And what, if anything, did you do after you
19 finished reading that steno pad?

20 A. I gave it back to Taglioni and I headed downstairs
21 to meet with the person I had been told was waiting to see
22 me.

23 Q. When you went to the 1st floor, what did you see?

24 A. I walked down, there was a heavy doorway, I opened
25 the doorway. On the other side of the doorway -- I believe

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2 Sergeant Cleeve and Captain Rowe had come downstairs with
3 me. On the other side of the doorway was a young man in a
4 business suit. I approached him and introduced myself and
5 said that I was Linda Fairstein, I was an Assistant District
6 Attorney in Manhattan, I was one of the people here working
7 on the case, and I asked him who he was.

8 Q. What, if anything, did he say to you?

9 A. He said that he was David Nocenti, and that he was
10 there, in his exact words words, "on behalf of the Salaam
11 family."

12 Q. After he said that to you, what, if anything, did
13 you say to him?

14 A. I said, "I understand that you are a lawyer,"
15 which is what the police had told me. He said, "Yes." And
16 I said, "Have you been retained by the family to represent
17 Mr. Salaam," and he said, "no, I'm not here to represent
18 him." And I said, "Why are you here," and he said, his
19 exact words were, "I'm a member of the family, I'm part of
20 the family." And I said, "Could you tell me please how you
21 are related to Mr. Salaam?" And he said, "Well, I'm not
22 related to him, I'm actually a friend of the family."

23 Q. And did you have further conversation with him?

24 A. Yes, and I went on to inquire exactly what -- I
25 said, "I don't understand, are you here as a lawyer, are you

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2 here as part -- as a friend of the family?" He said, "Well,
3 I'm here as a friend of the family." I said, "Are you with
4 a law firm?" And he said, "No, I'm not, " and he said, "I'm
5 an Assistant United States Attorney." And I was -- I
6 expressed to him my great surprise, I said, "I don't
7 understand how you can be here as an Assistant United States
8 Attorney." I asked him if he had identification, he opened
9 his wallet and he handed me a card which did, in fact, have
10 his name on it and said something like Department of
11 Justice, Assistant U.S. Attorney, Eastern District. And I
12 proceeded to have a very lengthy discussion with him about
13 his presence there and what I considered an ethical conflict
14 with his employment.

15 MR. BURNS: That's paraphrasing, Judge, can
16 we have the answer to the question?

17 THE COURT: You want the exact conversation
18 she had?

19 MR. BURNS: Whatever is it.

20 THE COURT: Give us the conversation.

21 THE WITNESS: Yes, it was quite a lengthy
22 conversation. I said, "Does anybody -- does your
23 supervisor know you are here?" He said no, no one
24 from his office knew he was here. I said, "Do you
25 understand you work for the government? I don't

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2 understand how you can be here representing a
3 suspect in a criminal inquiry." He said, "Well,
4 I'm not doing that." I said, "Well, why are you
5 here?" He said, "I'm here to help." I said, "Let
6 me ask you a couple of questions," and I proceeded
7 to tell him, in fact, a lengthy -- I don't mean an
8 anecdote in a humorous sense, but our position in
9 the District Attorney's office. I said, "I don't
10 know how Mr. Maloney runs his office but in our
11 office when our new assistants begin to work with
12 us, there is a training program and the first
13 panel session that we have as part of the training
14 program which consists of the new class of
15 applicants -- of assistant district attorneys and
16 two or three senior district attorneys and usually
17 one or two criminal court judges," and I said,
18 "The very first question that -- that we instruct
19 the assistants about is assume that you are home
20 at night asleep in bed and the phone rings and
21 it's your closest friend from grade school who
22 says I'm at the local precinct and my girl friend
23 has just been arrested for possession of drugs,
24 what do I do. And we elicit responses from the
25 assistants, and what we train them is that in your

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2 role as a prosecutor for the government, it is not
3 allowed for you to participate in that kind of
4 process and you must say to your closest friend
5 I'm sorry, I can't even advise you, I can't answer
6 any questions, I can't help you and explain why
7 because of your position." And I went on to tell
8 him that there is a radical view in the office
9 that there are assistants and judges who answer
10 the questions by saying well, I think you can tell
11 the person who has called you to get a lawyer, but
12 everyone agrees that you cannot get up out of bed
13 and go to the stationhouse and participate in that
14 process." And he and I spent a good five to ten
15 minutes discussing that situation.

16 He then said to me, "What if it were your
17 mother, " and I said, "keep my mother out of this,
18 this has nothing to do with my mother." That was
19 the beginning of the extended conversation.

20 Q. Did you have any conversation with him about
21 contacting a supervisor of his?

22 A. Yes, I did.

23 Q. And would you please tell us what conversation, if
24 any, there was on that subject?

25 A. I asked him if he had Andy Maloney's home

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2 telephone number, that I wanted to tell Mr. Maloney that he
3 was here and ask Mr. Maloney what he thought the propriety
4 of Mr. Nocenti's participating in this. He told me he did
5 not have Mr. Maloney's number. I asked him who his
6 immediate supervisor was, he said it was a man named
7 Begliter, whose name was not familiar to me. I said, "Do
8 you have Mr. Begliter's phone number," and he said, "well, I
9 do have that, but you can't call him." I said, "Why can't I
10 call him?" He said, "Because it's his holiday, it's
11 Passover." I said, "It's my holiday too, but there are some
12 things that transcend that in importance at the moment and
13 this is one of them. And it is the second night of
14 Passover, it is very close to midnight, the evening is
15 almost over, the dinner hour is essentially over and I would
16 like to speak to Mr. Begliter." He said, "Well, you can't
17 do that because he's at his mother's house for Passover, so
18 I can't even give you a number for that." That was that
19 conversation.

20 MR. BURNS: I'm sorry, it's a different
21 conversation from the first?

22 MS. LEDERER: Excuse me, can I ask --

23 THE COURT: Yes, please don't do that. We
24 said that many times. Are you objecting?

25 MR. BURNS: Judge, it is not clear, that's

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2 the only reason.

3 THE COURT: I think it is clear.

4 Q. After you had this conversation that you described
5 with --

6 MS. LEDERER: Withdrawn.

7 Q. Did you learn the name of the person you were
8 talking to?

9 A. Yes.

10 Q. What was his name?

11 A. David Nocenti.

12 Q. After you had this conversation with David
13 Nocenti, did you go somewhere and make a phone call?

14 A. Yes, this -- this whole conversation which was --
15 which started from the time I introduced myself to him and
16 went through these topics in the same place, in this sort of
17 ante room of the 1st floor, the entire conversation lasted
18 close to 15 minutes. I then walked directly across from
19 that doorway in this lobby area of the precinct. There is a
20 pay phone booth on the wall, and I walked to that phone
21 booth and took a quarter out of my pocket and called my
22 home -- called my husband at home.

23 Q. And did you have a conversation with -- with him
24 with respect to your conversation with David Nocenti?

25 A. Yes.

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2 Q. Did you obtain any phone numbers from your
3 husband?

4 A. I called for the purpose of getting my home phone
5 office list out of the desk drawer at home. I awakened my
6 husband, I asked him to get the list from the drawer so that
7 I could call one of my colleagues who I know was a close
8 personal friend of Mr. Maloney's add have a phone number for
9 him.

10 Q. At what time was it approximately that you recall
11 you called your home?

12 A. I know because my husband told me that it was
13 close to midnight and I should not call anyone from my
14 office, that the matter I described to him could wait to the
15 next day was his advice anyway. He gave me the number but
16 told me it was almost midnight.

17 Q. After you made that phone call to your husband,
18 what was the next thing that happened?

19 A. While I was talking on the phone, that's -- that
20 phone booth -- it is not a booth, but a phone on the wall.
21 It was I believe 10 or 12 feet from the front door of the
22 precinct. While I had gone to the phone -- the front doors
23 are double glass doors, the vestibule and glass doors
24 again -- Mr. Nocenti had walked outside the front door.
25 There were a number of people, there were more than five

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2 people, in the area outside the front door and the sidewalk,
3 it was a relatively mild night.

4 Q. Let me interrupt you for a moment. At any time
5 during this conversation you just told us about with David
6 Nocenti, did you ever tell -- did you ever ask him for
7 permission to speak to Yusef Salaam?

8 A. I did not.

9 Q. During that conversation, did he ever mention
10 anything about Yusef Salaam's age?

11 A. He never mentioned the word -- we never discussed
12 Yusaf's age.

13 Q. After you saw David Nocenti go outside, what was
14 the next thing that happened?

15 A. I believe the next thing that happened was that
16 somewhere from 5 to 10 minutes later, he came back inside
17 the precinct with several other people.

18 Q. Did you later learn the names of any of those
19 people?

20 A. Yes.

21 Q. And who did he come back inside with?

22 A. He came back inside and told me that this was Mrs.
23 Salaam, Yusaf's mother, and there was another woman and a
24 man -- a woman and man with them. I did not learn their
25 names.

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2 Q. Did you have a conversation with any of those
3 people at that time?

4 A. Yes, I introduced myself to Mrs. Salaam and I
5 asked her to introduce me to everyone there so that I would
6 know the people with whom I was speaking. I was concerned
7 about whether or not I was speaking to people who were part
8 of her family or related to any of the other suspects or
9 witnesses present. She told me that she would not tell me
10 who the other people were with her.

11 Q. At the time that you had this conversation with
12 Mrs. Salaam, who else was immediately present?

13 A. The people in her group and if anyone was with me,
14 it would have been Captain Rowe or Sergeant Cleeve, but I
15 don't remember that they were actually present.

16 Q. How long did that conversation last?

17 A. I would say less than two minutes.

18 Q. And if you recall, where on the 1st floor did that
19 conversation take place?

20 A. In that lobby where I'm calling the lobby area,
21 the reception area, after you enter the precinct double
22 glass doors and before you approach the -- the reception
23 area that a uniform police officer sits behind.

24 Q. When -- what was the next thing that happened
25 after Mrs. Salaam refused to identify the people that she

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2 was with?

3 A. She asked me if she could see her son.

4 Q. And what, if anything, did you say?

5 A. I told her that he was being questioned now by
6 detectives and that as soon as the questioning was done, she
7 could see her son.

8 Q. Was anything else said at that time?

9 A. No.

10 Q. What was the next thing that happened?

11 A. I don't remember who, whether she -- I think she
12 asked me if she could speak to Mr. Nocenti without me, I
13 said fine. The group of four individuals walked outside the
14 stationhouse.

15 Q. And what, if anything, did you do when they walked
16 outside the stationhouse?

17 A. When they walked outside the stationhouse, you
18 came downstairs and had a video technician from our office
19 with you and I believe two detectives. And --

20 Q. Let me just interrupt you for one moment. Do you
21 know at approximately what time that was?

22 A. Yes, I do. I know that it -- that it was several
23 minutes after midnight because what we proceeded to do
24 involved something that ended precisely at midnight.

25 Q. When you say, "what we proceeded to do," could

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2 could you tell us specifically how you were able to place it
3 at several minutes after midnight?

4 A. I saw you come downstairs with the video
5 technician and detectives and you went into a room that --
6 that we had been calling the youth room in the several hours
7 proceeding midnight that evening. And you, I believe the
8 video technician as far as I could see was starting to open
9 cases and setting up equipment. I know that happened before
10 midnight because until midnight Detective Sheehan and
11 Raymond Santana, Raymond Santana's father were in the room
12 and they were questioning Santana. I know now that
13 statement ended at midnight and you did not go into the room
14 with the video technician until after the statement ended.
15 While you were in the room, I saw the sergeant come from
16 behind the desk, go in and talk to you, after which you came
17 over to me and you and the sergeant and I had a conversation
18 outside that youth room.

19 Q. And what was the subject of that conversation?

20 A. It was at that time that we learned, you a moment
21 before me, that the room that we were calling the youth room
22 had been used as a youth room, there had been a proposal
23 submitted to make it formally designated the youth room but
24 that the designation had not been finalized at that moment
25 and you and I discussed for the next several minutes whether

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2 the propriety would be to go ahead and work in that room
3 knowing it was to be the designated youth room, whether we
4 should actually pick up this entire operation and all of the
5 detectives and all of the suspects and try to find another
6 precinct. We discussed we could not go to Central Park
7 because it was too small a precinct to work in and we were
8 beginning to ask the supervisor, Captain Rowe, how long it
9 would take -- how quickly we could move to find another
10 precinct close by with a designated youth room. That
11 conversation of five or so minutes went on outside that
12 room.

13 Q. And were you present during that conversation?

14 A. Yes, I was participating in it with you.

15 Q. What -- what happened at the end of that
16 conversation?

17 A. At -- the conversation ended with one of the
18 bosses saying to you that they knew that there was a youth
19 room at the 24th Precinct and I believe you and he were
20 going to make -- go upstairs, make phone calls and arrange
21 for all of us to start moving to the 24th Precinct.

22 Q. After that conversation ended, did you have
23 another conversation with Mrs. Salaam?

24 A. Yes. When you went upstairs, I was then alone in
25 that area, I would say -- I could see the front door, so I

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2 assume I was visible to the people by the front door. And
3 Mrs. Salaam and the woman she was with entered the
4 precinct -- entered and approached me without Mr. Nocenti,
5 but with -- or actually also the gentleman who was there.
6 So it was Mrs. Salaam and the couple she was with,
7 approached me and said they wanted to ask me questions. I
8 said that was fine, and I suggested we go into the large
9 room that's opposite the sergeant's desk where there were
10 seats where I thought it would be more comfortable and
11 private to sit in.

12 Q. And did you proceed to those seats that you just
13 described?

14 A. Yes.

15 Q. Who was -- who went to those seats, if you recall?

16 A. The four of us went to the seats.

17 Q. Were there any detectives or police officers
18 present?

19 A. No.

20 Q. And was there any conversation at that location?

21 A. Yes, I began again by asking Mrs. Salaam who was
22 present with her, my concern was because of the size of the
23 investigation and the number of families of suspects and
24 witnesses, the friends beyond family and then the press that
25 was beginning to gather, that I know to whom I was speaking

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2 and that I be speaking to the immediate families of -- of
3 the individuals. So I tried to explain that to Mrs. Salaam
4 and she told me that the woman with her was her cousin. And
5 I asked her who the gentleman was, she said it was her
6 cousin's fiancée. And I said that I would like to do the --
7 carry on the conversation and answer her questions with
8 herself and her cousin present, I would prefer that the
9 gentleman step outside and wait.

10 Q. And did he then leave?

11 A. Yes.

12 Q. And did you then have a conversation with Mrs.
13 Salaam and her cousin?

14 A. Yes.

15 Q. And would you tell us, please, what, if anything,
16 you said, and what, if anything, she said?

17 A. She said she wanted to know what was going on, she
18 wanted to see her son. I said again, "He's being
19 questioned, he's upstairs with detectives, as soon as
20 they're done, you can see him." She then said to me, "I
21 want to see him now, he's a minor."

22 Q. And what, if anything, did you say when she said
23 that?

24 A. I don't remember my exact words, I believe I said
25 that he would -- he had been advised of his rights, he was

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2 talking to the police now and she could see him when that
3 was done. By minor, minor was the expression that she used.
4 To me that was anyone under 21, which she at that point had
5 not said an age. She then went on to say to me the second
6 time, "He's 15 years old, I want to see him."

7 Q. What, if anything, did you do upon being told by
8 Mrs. Salaam that Yusef was 15?

9 A. I -- I reacted with surprise because that was the
10 first --

11 MR. BURNS: Objection.

12 THE COURT: I'll allow it.

13 A. I expressed surprise to her and said 15, that was
14 the first time that I had heard he was 15.

15 Q. And what, if anything, did you do at that point?

16 A. I asked her whether or not she had any form of
17 identification with her to -- to prove that he was 15.

18 Q. What --

19 A. I had seen the detective pads -- the detective's
20 pad which had just in the detective's handwriting a date of
21 birth that confirmed that he was 16 -- that informed me he
22 was 16 when he was being questioned.

23 Q. Up until that point, had you seen any
24 identification for Yusef Salaam?

25 A. I had not, no.

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2 Q. Had anyone mentioned any identification for Yusef
3 Salaam at that point?

4 A. Specifically to me? No, I heard that later.

5 Q. And when you asked for identification for Yusef
6 Salaam, what, if anything, did the mother say?

7 A. She said she didn't have anything with her, but
8 she certainly had identification at home and she could prove
9 that he was 15.

10 Q. And what, if anything, did you do when she -- when
11 she told you that?

12 A. I said, "Wait right here, I'll get the detectives
13 downstairs and we'll resolve this." And I immediately asked
14 Captain Rowe to send someone upstairs to get whoever was
15 questioning Salaam and whoever had brought him into the
16 stationhouse, if that was a different person, and bring them
17 immediately downstairs to meet with Mrs. Salaam.

18 Q. Let me go back for a moment. When this
19 conversation begun that you described where Mrs. Salaam, the
20 cousin and the cousin's fiancée first spoke to you,
21 approximately what time was that?

22 A. When they first walked into the station house?

23 Q. No, I'm referring now to the point just before you
24 went to the area where you sat down.

25 A. And started the conversation in the other room?

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2 Q. Yes, ma'am.

3 A. I would say it was -- could not have been earlier
4 than 12:15.

5 Q. And after -- after you gave the instructions about
6 getting a detective, what was the next thing that happened?

7 A. Captain Rowe or someone called or went upstairs
8 immediately within -- I would say within three minutes,
9 Detective Taglioni and Detective Rudy Hall came down to
10 the -- to the ground floor, approached us and I believe I
11 made the introduction of them to Mrs. Salaam. And there was
12 a conversation that followed that I didn't participate in
13 because I didn't know the facts of how Salaam had been
14 brought into the stationhouse, but it was a conversation
15 between Taglioni and Mrs. Salaam.

16 Q. And do you recall what, if anything, was said by
17 either Mrs. Salaam or Detective Taglioni?

18 A. I remember that that's when Detective -- Mrs.
19 Salaam said that her son was 15, Detective Taglioni said
20 that he was 16, that he had identification that proved he
21 was 16. That's when I learned there was a bus pass with the
22 date of birth that had been the date of birth transcribed
23 into McKenna's note pad.

24 Q. And what did Mrs. Salaam say in response to what
25 Detective Taglioni said, if you recall?

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2 A. I just recall she kept insisting he was 15.

3 Q. And did Detective Taglioni then leave?

4 MR. BURNS: Objection to leaving.

5 THE COURT: Yes, why don't you let her tell
6 what happened.

7 Q. What was the next thing that happened?

8 A. I think I said to Taglioni in the hall to stop the
9 questioning, get someone upstairs immediately to stop the
10 questioning.

11 Q. And what, if anything, happened after you said
12 that?

13 A. They left my presence immediately to go back to
14 what I believe was the 3rd floor.

15 Q. How long did the conversation between Detective
16 Taglioni and Detective -- and Mrs. Salaam last?

17 A. Again, two minutes, maybe three?

18 Q. And what, if anything, did you do after Detective
19 Taglioni and Detective Hall went upstairs?

20 A. I remained in the -- that lobby area downstairs.
21 I was waiting -- actually, I was waiting for you to see
22 whether we were going to move.

23 Q. And where was Mrs. Salaam, if you know, after
24 Detective Taglioni and Detective Hall left?

25 A. I walked out of the room with seats, I believe she

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2 was still seated there and I don't know, I know at some
3 point she -- when I next saw her, it was minutes later and
4 she was coming back with Nocenti from outside. So, I left
5 her in the room, at some point she left the room with seats
6 and went outside.

7 Q. When you saw her, as you just described, coming
8 back into the stationhouse with David Nocenti, did you have
9 any further conversation with either her or David Nocenti?

10 A. Yes, I first had a conversation with Nocenti
11 because while I was in the lobby area, family or friends of
12 another suspect whom I had seen upstairs on the 2nd floor
13 earlier came out of the doorway and went outside and were
14 stopped or engaged in conversation with Mrs. Salaam and
15 other relatives waiting outside. Nocenti went over and was
16 talking to them. I asked one of the detectives to go out
17 and get Nocenti, I asked him to come in. I said, "Mr.
18 Nocenti, you are entitled to talk to anyone you want to talk
19 to, but I want to know whether you are now counseling or
20 giving legal advice to any other families as well?" He
21 said, "I'm just answering questions they are asking." I
22 said, "Fine, I hope you are not giving legal advice." He
23 said -- that's when he used the expression "put yourself in
24 this situation, think of a similar hypothetical." And I
25 said, "I already told you what my response to that would

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2 be." Then he went back outside, and within a minute, Mrs.
3 Salaam came in and said to me, "We want to get a lawyer,
4 we're getting a lawyer for my son."

5 Q. Do you know what time it was that Mrs. Salaam said
6 she wanted a lawyer for her son?

7 A. At that time, I wrote down on a piece of paper
8 12:30. That was the only contemporaneous note I made at
9 that point, as I did later when other requests for lawyers
10 were made at 12:30 that night. It was the first time anyone
11 asked for a lawyer, I wrote down Mrs. Salaam said she was
12 getting a lawyer.

13 Q. At any time --

14 MS. LEDERER: Withdrawn.

15 Q. Did you have any further conversation with Mrs.
16 Salaam after that?

17 A. No.

18 Q. At any time during your conversations with Mrs.
19 Salaam, did you ever say anything to her about "phony ID"?

20 A. I did not.

21 Q. During any of your conversation with David
22 Nocenti, did he -- did you ever have a conversation with him
23 about why Yusef Salaam was at the stationhouse?

24 A. Yes, I did.

25 Q. And do you recall at what point you had that

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2 conversation with him?

3 A. Yes, it was during the lengthy fifteen, twenty
4 minute encounter we had when we first met and I was
5 distressed with his presence.

6 Q. Was that before or after Mrs. Salaam had arrived?

7 A. Before.

8 Q. And what, if anything, did you say to David
9 Nocenti or did he say to you with respect to why Yusef
10 Salaam was at the stationhouse?

11 A. I was trying to impress upon him why I thought
12 this was so serious and I asked him if he knew why Yusef was
13 in the stationhouse, and he said he had a good guess. And I
14 said, "Well, what do you know?" And he said well, he didn't
15 know much, he had watched the news, he had gone to sleep, he
16 had been awakened by Mrs. Salaam's phone call saying
17 something I believe there was some kind of trouble, the
18 police had Yusef at the stationhouse, could he meet her
19 there. Because he had heard something on the news, he
20 guessed it was about the rape in the park. And I said,
21 "You're wrong." And I said, "Lest you think it is just a
22 rope, that the only thing that happened was a rape," I said,
23 "there is a young lady who was virtually murdered, who is at
24 this moment clinging to her life and not expected to live at
25 the hospital," and that her head been split open with a pipe

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2 and that she had been attacked and hit in the face with
3 bricks and then sexually assaulted and that what we were
4 talking about was not boys' play, lest he think that's what
5 someone meant by a rape in the park, that we were talking
6 about probably a murder case and a very serious one, and
7 that's why I thought that what was going on was so
8 important.

9 Q. In the conversations that you had with Mrs. Salaam
10 that night, did she ever -- did you ever tell her that the
11 police were interviewing Yusef Salaam?

12 A. Yes.

13 Q. As you were speaking with her?

14 A. Yes.

15 Q. Did you ever deny to her that the police were
16 interviewing Yusef Salaam?

17 A. No.

18 Q. At any time prior to her telling you Yusef
19 Salaam's age --

20 MS. LEDERER: Withdrawn.

21 Q. Did you tell her that the police were interviewing
22 Yusef Salaam prior to her telling you his age?

23 A. Yes, I told her that's what they were doing,
24 believing he was 16. I didn't say "believing he was 16," I
25 said, "Since he is 16, the police are talking to him and you

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2 can see him when they are finished."

3 Q. At any time when you told Mrs. Salaam that they
4 were interviewing Yusef Salaam, did she ever say to you,
5 "Well, I understand from my cousin, who has had a conver-
6 sation with other detectives, that you can't speak to him
7 because he is 15 years old"?

8 A. Absolutely not, I --

9 Q. I'm sorry?

10 A. And her cousin -- her cousin was present, her
11 cousin never spoke to me.

12 Q. Did her cousin ever make mention to you after the
13 conversation she had had with detectives earlier in the
14 station?

15 A. She did not. I was not aware she had ever entered
16 the stationhouse until she first entered to meet me.

17 Q. And was there ever mention at all by any of the
18 people there on behalf of Yusef Salaam about a conversation
19 that had happened on the 2nd floor with Detective Taglioni?

20 A. No.

21 THE COURT: You use the word before "boys'
22 play," that was a word used by anybody?

23 THE WITNESS: No, I used it because
24 unfortunately, he --

25 THE COURT: That was not an expression used

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2 by any person?

3 THE WITNESS: No, I meant it not to minimize
4 the sexual assault as just something not serious.

5 Q. At any time in your conversations with Sharonne
6 Salaam, did she ever mention anything about a health card?

7 A. She did not.

8 Q. Did any of the detectives that night or at any
9 time mention to you about a health card belonging to Yusef
10 Salaam?

11 A. I never heard that expression at all.

12 Q. Did you ever see any kind of a blue or purple card
13 with Yusef Salaam's name imprinted in it?

14 A. I -- the only card I ever seen with his name on it
15 was later that morning, the bus pass that he had had.

16 Q. Did you ever see Yusef Salaam's wallet that night?

17 A. No, I did not know he had a wallet.

18 Q. Did you at some time then leave the 20th Precinct
19 to go someplace?

20 A. Yes, I did.

21 Q. And what time did you leave?

22 A. Say by 12:40 that evening -- between 12:30 when I
23 made that notation and within the next ten minutes left the
24 stationhouse.

25 Q. And who did you -- where did you go?

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2 A. I went with you, driven by some detectives, to the
3 24th Precinct on West 100th Street.

4 Q. During the next --

5 MS. LEDERER: Well, withdrawn.

6 Q. Throughout -- where were you then throughout the
7 morning of April --

8 MS. LEDERER: Withdrawn.

9 Q. Did you ever return to the 20th Precinct after you
10 left at 12:30 or 12:40 on the morning of April 21st?

11 A. No.

12 Q. And to your knowledge, did I ever leave the 24th
13 Precinct to return to the 20th Precinct at any time on the
14 morning of April 21st or in the ensuing day or days?

15 A. You were at the 24th Precinct from 12:45 Friday
16 morning till 4:00 o'clock Saturday morning, leaving only for
17 the trip that we took together to the crime scene for
18 fifteen or twenty minutes. You did not go back to the 24th
19 Precinct -- excuse me, 20th Precinct.

20 MS. LEDERER: May I just have one moment?

21 (There is a pause in the proceedings.)

22 MS. LEDERER: Your Honor, may we approach
23 just one moment?

24 (There is a discussion at the bench, off the
25 record, among the Court and Counsel and out of the

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2 hearing of open court. At the conclusion of the
3 bench conference, the following takes place in
4 open court:)

5 (There is a pause in the proceedings.)

6 COURT CLERK: Hearing is resumed.

7 THE COURT: Okay, Miss Fairstein.

8 (The witness resumes the witness stand.)

9 THE COURT: Have you finished?

10 MS. LEDERER: No.

11 Q. Directing your attention again to the 20th
12 Precinct, at the time when you saw Detective Taglioni, did
13 he ever mention to you that he had had a conversation
14 earlier with any representatives of the Salaam family?

15 A. No.

16 Q. At any time did he ever mention that to you?

17 A. No.

18 Q. I'd like to please direct your attention now to
19 between 7:00 and 8:00 a.m. on the morning of April 21st when
20 you went to the 102 Street Crossdrive in Central Park. I
21 believe you told us when you testified here earlier that you
22 went with Detective Sheehan; is that correct?

23 A. I did.

24 Q. And when you went to the crime scene with
25 Detective Sheehan, did there come a time where Detective

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2 Sheehan called Kharey Wise to the scene where there was some
3 blood on the ground?

4 A. Yes.

5 Q. And where were you at the time he did that?

6 A. I was directly next to Detective Sheehan, I was
7 one foot away from Detective Sheehan and two feet away from
8 Kharey Wise.

9 Q. At any time was Detective Sheehan present at that
10 location with Kharey Wise where you were any further
11 distance away than that?

12 A. He was not.

13 Q. Did you ever at any time hear Detective Sheehan
14 tell Kharey Wise to kneel down?

15 A. He did not.

16 Q. Did you at any time hear Detective Sheehan tell
17 Kharey Wise to take blood and smear it on his clothing?

18 A. I heard all of this conversation between them,
19 which was very short and limited, that was never said.

20 MR. MOORE: Objection, to the first part --

21 THE COURT: Strike the first part.

22 The question was whether you ever heard him
23 tell Kharey Wise to take blood and smear it on his
24 clothes.

25 THE WITNESS: I did not hear that.

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2 Q. Again, if I could just for a moment direct your
3 attention back to the 20th Precinct and, in fact, even at
4 the 24th Precinct, do you recall whether you saw any black
5 detectives working in connection with the Central Park case?

6 A. Yes.

7 Q. And how many black detectives did you see?

8 A. The only detective who is a black man who I saw
9 that night is Rudy Hall, who I have known for a number of
10 years.

11 MS. LEDERER: Thank you very much. I have
12 nothing further.

13 MR. BURNS: I'm sorry, do I go?

14 THE COURT: Yes.

15 MR. BURNS: I was trying to establish eye
16 contact, we generally do.

17 What letter are we up to for defense exhibit?
18 I would like to have this marked Salaam Defense
19 Exhibit whatever the next letter is for identifi-
20 cation. Salaam J --

21 THE COURT: I am told it should be I.

22 MR. BURNS: It's I?

23 COURT OFFICER: Salaam I.

24 MR. BURNS: Would you show Salaam I to the
25 witness, please?

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2 (Exhibit handed to the witness by the court
3 officer.)

4 Q. Miss Fairstein, I ask you to look at Defendant's I
5 for identification and ask you do you recognize it?

6 A. Yes, I do.

7 Q. And that's a copy of -- of a writing; is that
8 right?

9 A. Yes, a hah -- yes.

10 Q. And do you recognize it as being in your
11 handwriting?

12 A. I certainly do.

13 Q. Now, when did you -- when did you make the
14 notations which are contained on Defendant's I for identi-
15 fication?

16 A. I made these during the business week after these
17 events, the events we are discussing, so the week of the
18 24th or so.

19 Q. All right. Would it be on the 24th?

20 A. I don't have a date on the top of the page.

21 Q. I know that.

22 A. I can do no more than estimate it was the 24th or
23 '5th, the beginning of that week.

24 Q. Do you know whether it was either the 24th or the
25 25th, Miss Fairstein?

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2 A. I do not know which date.

3 Q. And do all of the notations which are contained on
4 Defense Exhibit I for identification, were they all made at
5 the same time? In other words, is it -- are there portions
6 of it that were written at one time and then a day later
7 other portions -- do you understand my question, Miss
8 Fairstein?

9 A. Yes. Something appears to be made at a different
10 time because my handwriting is a little different. There is
11 one notation, but the rest was all made at one time.

12 Q. All right. And can you tell us how much time
13 passed between the times you made the two separate
14 notations?

15 A. Maybe another couple of days, but it was the same
16 week.

17 Q. In other words -- just so I have it straight, in
18 other words, you made some notes a week or so thereafter the
19 20th of April and then two days later you completed what's
20 contained in Defense Exhibit I for identification; is that
21 correct?

22 THE COURT: Excuse me, did you say the 20th
23 of April, I'm not sure?

24 Q. The testimony that you gave in relation to Salaam,
25 that was on the evening of the 20th of April?

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2 THE COURT: I thought you were talking about
3 the notes, I'm sorry.

4 Q. The notes were there written a week thereafter but
5 the following week, but you don't know which day?

6 A. I think the 24th or 25th is what my direct
7 testimony was.

8 Q. Right. And insofar as -- it wasn't all completed
9 at one sitting?

10 A. There's just one line that I believe I added
11 later.

12 Q. Could you point out to me the one line?

13 A. Yes (indicating).

14 Q. And what was the -- what occasioned your writing
15 these notes or writing the notations which are contained on
16 Defense Exhibit I for identification when you did?

17 A. I tried to --

18 Q. Do you understand my question? What brought it
19 about that you decided to do notes to -- to make notes or
20 make notations a week or so thereafter?

21 A. I attempted the week of the 24th to write notes
22 about as much -- well, as much, but about significant events
23 during the 40 or so hours that Miss Lederer, Mr. Clements
24 and I had been working at the precincts; and I made notes,
25 as you know, other than those about some of the events.

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2 MR. BURNS: I move to strike that answer as
3 not being responsive.

4 Q. asked you what brought it about that you made the
5 notes, we know you made --

6 MS. LEDERER: Excuse me, I think she answered
7 the question.

8 THE COURT: I think the answer is responsive.
9 He is asking you why did you make the notes
10 at that time.

11 MR. BURNS: Yes.

12 THE COURT: Okay.

13 THE WITNESS: I thought I answered it.

14 THE COURT: I thought you did too.

15 A.: No one told me to. It is my practice to do that
16 and I did it in this case, I brought it about.

17 Q. And were you alone at the time that you made the
18 notes?

19 A. Yes, I was.

20 Q. Had you had any conversations concerning what was
21 in the notes -- what you reduced to writing, had you had any
22 conversations with anyone prior to you reducing -- making
23 these notes?

24 A. What I don't understand about your question is
25 conversations about the events?

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Q. About the event of the 20th?

A. About many events, yes.

Q. Please excuse me, you are right, it is not clear
and I'll withdraw the question.

Did you have any conversation concerning what is
contained in the notes which are contained in Defendant's
Exhibit I for identification before you made the notes?

A. No.

Q. Now, what time was it when you received word that
someone was downstairs inquiring about Yusef Salaam?

A. About 11:30 that evening.

Q. All right. Did you ever make a notation to the
effect that you had received word at a time earlier than
11:30?

A. Yes.

Q. And what would that earlier time be?

MS. LEDERER: Objection.

THE COURT: No, I'll allow it.

A. 11:00 o'clock.

Q. Now, is the 11:00 o'clock --

MR. BURNS: Withdrawn.

Q. Is there any frame of reference that you have that
has convinced you that it was 11:30 rather than 11:00
o'clock?

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2 A. Yes, a number of things.

3 Q. Was there a frame of reference that led you to
4 believe that it was actually 11:00 o'clock rather than
5 11:30?

6 A. No, I learned from a number of sources, including
7 Mr. Nocenti himself, that it was 11:30. I had my
8 notation -- earlier notation had been about 11:00 o'clock.
9 I later learned, as you know from the notes, that it was
10 11:30.

11 Q. Were you aware of the fact that Mr. Nocenti had
12 been interviewed by Miss Lederer?

13 A. When was I aware of the fact?

14 Q. Were you ever made aware of that?

15 A. Yes, I was made aware of that.

16 Q. When was the first time that you were made aware
17 of the fact that Mr. Nocenti had been interviewed by Miss
18 Lederer?

19 A. I don't know when it occurred, it was several
20 months after April and after he had been interviewed I
21 believe she told me -- I know she told me he had been
22 interviewed.

23 Q. And did you also learn that notes that he had made
24 had been turned over to Miss Lederer?

25 A. Yes.

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Q. And did you have access to those notes?

A. I had to get those notes when he --

MR. BURNS: No, move to strike as not responsive. I asked for a yes or no.

THE COURT: Read the question back. Strike it out.

(The last question was read back.)

MS. LEDERER: Your Honor, I object to that question, as to form.

THE COURT: I'll allow it.

THE WITNESS: I don't mean to be disrespectful, my answer would be the same, I arranged to get the notes.

THE COURT: That means you had access to them?

THE WITNESS: Yes.

THE COURT: That's the question.

Q. Were you provided with a copy of those notes?

A. No.

Q. And when did you examine Nocenti's notes.

MS. LEDERER: Objection.

THE COURT: I'll allow it.

A. I read his notes once several months ago when I obtained them.

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1
2 Q. Were the notes given to you?

3 MS. LEDERER: Objection.

4 THE COURT: Is that the question?

5 MR. BURNS: Yes.

6 THE COURT: As against taking them? I don't
7 understand.

8 MR. BURNS: I'm sorry, it is in response to
9 her last answer.

10 THE COURT: Objection sustained as to the
11 question.

12 MR. BURNS: She said, "I got those notes, I
13 obtained those notes."

14 THE COURT: I sustained the objection -- the
15 question -- the objection.

16 Q. Didn't you say you obtained them when you read the
17 notes?

18 A. Yes.

19 Q. When did you obtain the notes?

20 THE COURT: That wasn't your question but
21 I'll allow it, when she received it.

22 A. I can't give you a date but Mr. Nocenti's
23 supervisor Faxed them to me.

24 Q. Did Mr. Nocenti's supervisor Fax the notes to you
25 at your request?

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2 A. At the request of Barbara Jones, the First
3 Assistant --

4 MR. BURNS: No, your Honor.

5 THE COURT: The answer is yes or no.

6 THE WITNESS: Okay, no. At my request, no.

7 Q. But you initiated the request for the notes; is
8 that correct?

9 MS. LEDERER: Objection.

10 THE COURT: Objection sustained.

11 Q. She mentioned a Barbara Jones --

12 THE COURT: Objection is sustained.

13 Q. How did you get the notes?

14 THE COURT: They were Faxed to her.

15 Q. Were they Faxed to you or Faxed to Barbara Jones?

16 MS. LEDERER: Objection.

17 THE COURT: Sustained.

18 Q. Where are the notes that you received?

19 A. I gave them to Miss Lederer, I did not keep a
20 copy.

21 Q. After reviewing those notes, is that when you then
22 made the notation or changed the notation?

23 A. No, sir. If you have been listing, as I told you,
24 the notes I made were in April, the week of April 24th, and
25 it was several months later that Mr. Nocenti's notes arrived

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at our office.

Q. All right. Well, when you first made the notes, was it your belief that you learned that Nocenti was in the precinct at 11:00 o'clock?

A. When I made the notes, I was trying to reconstruct the hours from 8:30 on the evening of the 20th through 4:00 a.m. on the morning of the 22nd and --

MR. BURNS: I move to strike as not responsive.

THE COURT: No, I'll allow it.

Finish your answer.

A. I was trying to put approximate time periods for each event that happened within --

MR. BURNS: Your Honor, I moved to strike --

THE COURT: I know, I overruled it. I'll allow the answer.

MR. BURNS: This is my cross-examination.

THE COURT: Yes, but I'm the one who makes the rulings.

Finish your answer, please.

A. I was trying to reconstruct general periods of time in that however many hours it is. Seemed to be thirty some odd hours that we were working on the events. It would have been impossible, nor did we try -- did I try to

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2 reconstruct the minute by minute account.

3 MR. BURNS: Can I get an answer to the
4 question that I asked, your Honor?

5 THE COURT: Yes.

6 The question was as to the time as far as the
7 11:00, 11:30 times are concerned that you made
8 notes about, that's what he was asking you about.

9 THE WITNESS: But I --

10 THE COURT: Read the question back.

11 (The last question is read back.)

12 A. When I first made the notes, I had put no notation
13 about the time, as I told you, because I didn't know what
14 time Nocenti was there. I later, at a separate day,
15 estimated about 11:00 o'clock, not 11:00 o'clock, but the
16 word "about" appears there, 11:00 o'clock. I then later
17 learned that it was 11:30.

18 Q. The first time you wrote the notes, there was no
19 time thereon; is that right?

20 A. Correct. That's right.

21 Q. Did you have a perception as to what time it was,
22 even though you didn't put the time?

23 MS. LEDERER: Objection.

24 Q. Or was that blank to you --

25 MS. LEDERER: Objection.

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THE COURT: I'll allow it.

A. My only --

Q. Do you understand my question?

A. I'm trying to.

MR. BURNS: Could you readk it back, Mr. Tierney?

THE COURT: Either you do or you don't. If you don't understand it, tell him and he'll restate the question.

A. Would you restate the question?

Q. When you first made the notation relative to being informed that Nocenti or a person was downstairs who you later found was Nocenti was inquiring for Salaam, did you have a perception as to what time it was?

A. I don't remember now if I had a perception as to what time it was.

Q. Okay. But a couple of days thereafter, you did have a perception that it was approximately 11:00 o'clock; is that correct?

A. About 11:00 o'clock is the word I used.

Q. About 11:00 o'clock. And how long did you maintain that perception until you changed it again?

A. I would say that within the next two weeks as I further reconstructed the events.

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2 Q. So, that's two weeks thereafter that you then
3 realized it was 11:30?

4 A. Well, within that period of time I would say it
5 came to my attention.

6 Q. And how did it come to your attention?

7 A. In a number of different ways. I had a
8 conversation with Mr. Nocenti's supervisor, Mr. Roache, from
9 the U.S. Attorney's office in the Eastern District.

10 Q. Anybody else?

11 A. Anybody else what?

12 Q. Did you have a conversation with anybody else is
13 what I'm asking.

14 A. About what, Mr. Burns?

15 THE COURT: About the time. We're talking
16 about the 11:00, 11:30 time, that's what we're
17 talking about.

18 A. I had conversations with some detectives and
19 supervisors who had been present about the events that --
20 that may have helped me clarify the time.

21 Q. After receiving the information that he was
22 downstairs, you say that's when you sent -- well, you
23 reached out, found out where Salaam was and who was talking
24 to him?

25 A. Yes.

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Q. And you say Detective Taglioni showed up and gave you that information; is that right?

A. Yes.

Q. And did you send Taglioni down to get the spiral pad to see how far the interview had progressed?

A. Detective Taglioni came downstairs to me on the 2nd floor with the spiral book. I asked someone to get -- I didn't know who the detectives were working with Salaam. In response to my request, Taglioni appeared, he was holding --

Q. With the --

A. -- was holding the book and said it was Detective McKenna's book and McKenna was talking to Salaam.

Q. And how long did you -- how long did that take?

A. It took at most two to three minutes for someone to go one floor up and Taglioni to appear with the book. I looked at the book, asked Taglioni a few questions about it. That took about maybe another two to three minutes. Then I walked the one flight down to meet Mr. Nocenti.

Q. And would that be, according to your estimate, about 11:35?

A. 11:35, 11:36, yes.

Q. Now, it's your testimony that the first thing David Nocenti said to you in response to when you asked him who he was and he gave you his name, he said that he was there on behalf of the family?

A. On behalf of the Salaam family.

Q. In behalf of the Salaam family?

A. Yes.

Q. Is that right?

A. That's correct.

(Continued on next page)

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1 FAIRSTEIN - REBUTTAL - CROSS - BURNS

2 Q And from that you understand he was there
3 to find out what was going on insofar as Yusaf
4 Salaam was concerned?

5 A I didn't understand anything. I asked him
6 what his role was.

7 Q And did he tell you he was there to find
8 out, you know, about what was going on?

9 A No, he repeatedly used the expression, "I'm
10 here on behalf of the family. I'm waiting for Mrs.
11 Salaam," and then I asked specific questions I told
12 you about, whether he was a lawyer and representing
13 Yusaf.

14 Q Is it your testimony that he didn't --

15 MS. LEDERER: Objection as to form.

16 Q -- say anything other than "I'm here on
17 behalf of the Salaam Family?" In other words, what
18 I'm saying --

19 THE COURT: Let's withdraw one.

20 MR. BURNS: Let me withdraw that.

21 Q Did he ever convey to you in words that he
22 was there to find out about Yusaf?

23 A Did he ever use those words?

24 Q No, no. Did he convey so that you
25 understood what -- what he came there for?

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1 FAIRSTEIN - REBUTTAL - CROSS - BURNS

2 MS. LEDERER: Objection.

3 THE COURT: I'll allow it.

4 Q Do you remember what he said in words or
5 substance?

6 A Yes, again I repeat, "I'm here on behalf of
7 the family," and that's why I was asking the
8 questions, because I said to him, "I can't
9 understand what your role is here. Are you here as
10 a lawyer?" And we had this repeated series of
11 questions and he said, "No. I know I can't be here
12 as a lawyer. I know I can't represent him. I'm an
13 Assistant United States attorney."

14 Q But he came as -- well, did you understand
15 he came as a representative of the family?

16 A No, I repeat to you -- no, he did not come
17 as a representative of the family. He said he was
18 waiting for the mother, and he was there on behalf
19 of the family waiting for the mother.

20 Q Well, didn't you understand from the use of
21 the words, "In behalf of the family," that he was
22 saying he was a representative, a non-lawyer
23 representative?

24 MS. LEDERER: Objection.

25 THE COURT: I'll allow it.

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NYCLD_015340

P-APP001285

T2-fr

4494

1 FAIRSTEIN - REBUTTAL - CROSS - BURNS

2 A I did not understand that.

3 Q He never told you that he was the attorney
4 for Yusaf Salaam; isn't that true?

5 A That's right.

6 Q He never told you that he was there in his
7 official capacity as an Assistant U.S. Attorney,
8 isn't that true?

9 A That's correct.

10 Q He did say that he was a friend of the
11 family, isn't that true?

12 A He first said, quote, "I am a member of the
13 family. I am a part of the family," and I said,
14 "Would you explain to me how you are related,"
15 well, then he said, "Well, actually I'm just a
16 friend of the family." That was the exact language.

17 Q Well, let me ask this question. Wasn't it
18 clear to you from what he said that he was an adult
19 interested in Yusaf Salaam's welfare?

20 MS. LEDERER: Objection.

21 THE COURT: I'll let her answer.

22 Yes or no?

23 THE WITNESS: I assumed he was
24 interested in --

25 Q That's yes or no.

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T2-fr

4495

1 FAIRSTEIN - REBUTTAL - CROSS - BURNS

2 THE COURT: If she can answer it yes
3 or no.

4 THE WITNESS: I can't answer that.
5 No.

6 THE COURT: She said she can't answer
7 that question yes or no.

8 THE WITNESS: I didn't know if he was
9 there --

10 THE COURT: Wait a second. If you
11 can't answer, you can't answer.

12 THE WITNESS: Okay.

13 Q Do you know whether he was interested in
14 Yusaf Salaam?

15 MS. LEDERER: Objection.

16 THE COURT: Sustained.

17 Q Didn't he tell you that he was Yusaf's big
18 brother?

19 A He didn't tell me that until --

20 Q That's a yes or no?

21 A Until the last conversation we had.

22 MR. BURNS: Move to strike as not
23 responsive.

24 THE COURT: I'll allow it. Finish the
25 answer.

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T2-fr

4496

1 FAIRSTEIN - REBUTTAL - CROSS - BURNS

2 THE WITNESS: One hour later. That
3 was the last conversation we had.

4 MR. BURNS: I move to strike as not
5 responsive.

6 THE COURT: I will allow it.

7 Q Did he tell you he was Yusaf's big brother?

8 THE COURT: She already answered the
9 question.

10 MR. BURNS: But not in response to my
11 question.

12 THE COURT: I've overruled the
13 objection. I allowed her to answer the
14 question. She did. You have an answer to
15 that question.

16 Now, what is your next question?

17 Q When you went downstairs to meet the person
18 who you later determined -- learned was David
19 Nocente, you understood, did you not, that the
20 questioning of Yusaf Salaam was continuing?

21 A Yes.

22 Q And incidently, when you got downstairs to
23 the lobby of the 20th Precinct, did you see David --
24 withdrawn.

25 Who was in the lobby?

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NYCLD_015343

P-APP001288

T2-fr

4497

1 FAIRSTEIN - REBUTTAL - CROSS - BURNS

2 A When I came down it was only --

3 Q The first time you saw David Nocente?

4 A He was alone.

5 Q There was no one else in the lobby?

6 A No one else.

7 Q How many separate conversations did you
8 have with David Nocente?

9 A I had what I called the first long
10 conversation that I estimated lasted 15 to 20
11 minutes about a variety of subjects from the
12 introduction on.

13 MR. BURNS: Objection.

14 THE COURT: Counsel ask you how many
15 separate conversations you had with David
16 Nocente, I believe that's the question.

17 THE WITNESS: Okay.

18 THE COURT: Without telling us the
19 substance of each one.

20 THE WITNESS: Three or four.

21 Q Did you have all of these conversations
22 prior to your first conversation with Miss Salaam?

23 A No.

24 Q Can you tell us how many conversations did
25 you have with David Nocente after you had spoken to

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NYCLD_015344

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T2-fr

4498

1 FAIRSTEIN - REBUTTAL - CROSS - BURNS

2 Mrs. Salaam?

3 A After I spoke to Mrs. Salaam the first time
4 or the last time?

5 Q All right. After you had spoken to Mrs.
6 Salaam the last time, did you speak to David
7 Nocente?

8 A Yes, briefly. I spoke to Nocente, Mrs.
9 Salaam, Nocente, and that was when I made the note,
10 12:30 she had asked for a lawyer.

11 Q Now, the first time you spoke to Nocente,
12 you say that was before 12:00?

13 A Yes.

14 Q And that conversation was lengthy?

15 A Yes.

16 Q And during that conversation did tempers
17 rise?

18 A My temper did.

19 Q Did you become very agitated?

20 A I would describe him as agitated. I was --
21 I wouldn't say agitated. I was displeased. I was
22 angry.

23 Q Were you screaming, would you say that?

24 A No, I wasn't screaming.

25 Q Did your voice rise to a shrill or a shout?

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4499

1 FAIRSTEIN - REBUTTAL - CROSS - BURNS

2 A No, there was no need to shout, he was
3 right next to me.

4 Q You accused him of acting in an unethical
5 manner?

6 A Yes.

7 Q And did a lot of the conversation deal with
8 lawyer's ethics?

9 A We had a conversation about ethics.

10 Q Did he question your ethics or your ethical
11 behavior?

12 A He never said that he did. I don't know
13 what he was thinking, but to me he never questioned
14 it or spoke of it to me.

15 Q Did there come a time during that
16 conversation when you said that you would make a
17 complaint against him in the Bar Association?

18 A I started by saying --

19 Q Is that a yes?

20 A We got to that, yes.

21 Q That's the first conversation?

22 A No. The first conversation he was near
23 tears, begging me not to call his boss. He was very
24 near tears.

25 Q When you started the conversation, was he

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4500

1 FAIRSTEIN - REBUTTAL - CROSS - BURNS

2 -- was he near tears?

3 A No.

4 Q And during this 15 minutes of conversation,
5 he was reduced to being near tears; yes or no?

6 MS. LEDERER: Object as to the form.

7 A No.

8 THE COURT: I'll allow it.

9 Q Yes or no?

10 A No.

11 Q No?

12 A No.

13 Q But you said he was near tears?

14 A Yes. He was not reduced to being near
15 tears, Mr. Burns.

16 Q Please, excuse me. When you started the
17 conversation, he was not near tears or did he give
18 any indication that he was even on the brink of
19 tears; is that true, when he started the
20 conversation?

21 A That's true, when we started with
22 introductions.

23 Q And at the end of that 15, 20 minutes of
24 talking to him, he was near tears?

25 A No. In the middle of the conversation when

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4501

1 FAIRSTEIN - REBUTTAL - CROSS - BURNS

2 we discussed my speaking to his supervisor he became
3 very nervous. Said that he was nervous. Said that
4 he was in a situation over his head. Appeared to
5 have tears in his eyes and literally begged me not
6 to call his boss. I said it was serious enough that
7 I thought it was a matter of ethics that I would
8 take up with the Bar Association.

9 Q Now, was it in ten minutes he was begging
10 you not to call his boss?

11 A Ten or 15, yes.

12 Q And that's when he was near tears, and you
13 saw what appeared to be tears in his eyes?

14 A That's the way it appeared to me, yes.
15 Then he regained his composure.

16 Q After ten minutes of talking to you, he had
17 lost his composure?

18 MS. LEDERER: Objection.

19 THE COURT: Sustained.

20 Q At what point in the conversation had he
21 lost his composure?

22 MS. LEDERER: Objection.

23 THE COURT: Sustained.

24 Q Had he regained his composure by the time
25 that first conversation had ended?

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4502

1 FAIRSTEIN - REBUTTAL - CROSS - BURNS

2 MS. LEDERER: Objection.

3 THE COURT: I'll allow it.

4 A Yes.

5 Q And how much -- withdrawn.

6 Had Mrs. Salaam arrived at that time?

7 A No.

8 Q Did you have another conversation with
9 Nocente prior to Mrs. Salaam arriving?

10 A I don't believe we did. At the end of that
11 conversation is when he walked outside the station
12 house and I used the phone.

13 Q And that's when you say you called your
14 husband -- I'm sorry. That's when you called your
15 husband?

16 A Yes.

17 Q And after getting off the phone with your
18 husband, that's when Mrs. Salaam came into the
19 precinct?

20 A No, not immediately. There were still, I
21 would say, another maybe -- almost five minutes that
22 went by. I was in that lobby and Mr. Nocente and
23 Mrs. Salaam and a group came in.

24 Q And what time would that be?

25 A Could have been anywhere from ten of

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T2-fr

4503

1 FAIRSTEIN - REBUTTAL - CROSS - BURNS
2 twelve, five of twelve, I would say. Shortly before
3 twelve.

4 Q There's no notation -- you didn't make a
5 notation relative to that time; is that right?

6 A That's correct.

7 Q And there's really no objective frame of
8 reference other than your best estimate, would that
9 be fair to say?

10 A No. There's the conversation I testified
11 to when -- after Mr. Nocente left me and shortly
12 before he reappeared with Mrs. Salaam, when I made
13 the phonecall to my husband and my husband gave me
14 the phone number I wanted and said, "Don't call her
15 now. It's almost midnight."

16 Q Did he tell you what time it was?

17 A No, he said, "It's almost midnight."

18 Q He didn't say whether it was five to twelve
19 or ten to twelve?

20 A No.

21 Q Or even a quarter to twelve?

22 A No.

23 Q And it could have been even those times;
24 isn't that true?

25 MS. LEDERER: Objection.

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T2-fr

4504

1 FAIRSTEIN - REBUTTAL - CROSS - BURNS

2 THE COURT: Sustained.

3 Q All you know it was before midnight, isn't
4 that true?

5 A Shortly before midnight.

6 Q Well, you don't know how short; isn't that
7 true?

8 A That's true.

9 Q And then Mrs. Salaam came into the precinct
10 accompanied by David?

11 A Yes.

12 Q And a female and a male; is that right?

13 A Yes, yes.

14 Q Now, the second conversation that you had
15 with David was that following this first
16 conversation that you had with Mrs. Salaam?

17 A No. The second conversation with David was
18 -- this moment when he came in the stationhouse with
19 Mrs. Salaam and he said to me, "This is Yusaf's
20 mother. This is Mrs. Salaam." So I would call that
21 my second conversation with Nocente.

22 Q And was that the extent of that
23 conversation after he made the introductions?

24 A Yes, that's the extent of my talking to him
25 or him to me, yes.

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NYCLD_015351

P-APP001296

T2-fr

4505

FAIRSTEIN - REBUTTAL - CROSS - BURNS

Q And did you say to Miss Salaam that you --
withdrawn-

Is it that time when Miss Salaam came in
and said that she was Mrs. Salaam and she wanted to
see her son; is that right?

A Yes.

Q And after she said that she wanted to see
her son, did you say or tell her that you wanted to
talk to her?

A No, I first responded to her question, "Can
I see my son? I'd like to see my son."

Q And then you told her he was being seen by
detectives, talked to or interviewed, or questioned
by detectives; is that right?

A Right, that is correct.

Q Do you remember the words you used relative
to what was happening between Yusaf and the
detectives?

A My best recollection is that I said either
questioned or interviewed by.

Q Did you in your own mind make a distinction
between interviewed or being questioned?

MS. LEDERER: Objection.

THE COURT: Sustained.

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